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May 31, 2024

Via CM/ECF

Hon. Ona T. Wang
United States District Court
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

Re: Case No. 20-cv-4322, *King v. Habib Bank Limited*, Joint Status Letter Regarding Discovery

Dear Judge Wang:

Pursuant to the Court's Orders at the July 18, 2023 and May 21, 2024, Status Conferences, Plaintiffs and Defendant Habib Bank Limited ("HBL") submit this joint status letter regarding discovery.

I. Recent Progress

a. Discussions Between the Parties

On May 24, 2024, the parties met and conferred regarding the following issues:

1. HBL's plan and efforts to collect customer KYC files for the 349 Undetermined Accounts that processed transactions through New York during the time period applicable to discovery (discussed *infra* at I.c.);

2. Plaintiffs' discovery disputes with KPMG, A&M, and the New York DFS that are premised on HBL's relevance objection to third-party consultant documents (discussed *infra* at II.f.);

3. Plaintiffs' desire to exceed the default limit of 10 depositions;

4. Plaintiffs' request that HBL produce account-opening and KYC records and fund transfer data for identified true-positive customers (discussed *infra* at II.g.);

5. HBL's request that Plaintiffs supplement their responses to Plaintiffs' Responses and Objections to HBL's First Set of Requests for Admission and First Set of Interrogatories (discussed *infra* at II.i.);

6. HBL's request that Plaintiffs fully comply with HBL's November 2022 Requests for Production of Documents by producing documents including medical records for certain Bellwether Plaintiffs.

The parties are continuing to discuss and follow up on the majority of these issues in the spirit of reaching compromises without the need for Court intervention.

On May 28, 2024, HBL provided Plaintiffs HBL's proposed revisions to the Protective Order to address HBL's concerns about producing customer account information for potential false-positive customer files that might be produced in connection with the Undetermined Accounts (discussed *infra* at I.c.). The parties have been exchanging edits and reached agreement on this issue.

On May 28, 2024, the parties met and conferred regarding HBL's revised privilege log served on May 2, 2024. That issue is discussed further *infra* at II.h.

The parties are continuing to discuss a timeline for HBL to supplement its responses to Plaintiffs' contention interrogatories.

b. Amended Scheduling Order

In accordance with this Court's May 22, 2024 Order (ECF No. 259), Plaintiffs and HBL jointly request that the Court modify the current Case Management Plan and Scheduling Order (ECF No. 93) to account for the extension of the fact discovery deadline. Specifically, the parties jointly request that the Order be amended to include the following adjusted dates:

Event	New Deadline
Fact Discovery Deadline (ECF No. 93, ¶ 8.a)	August 30, 2024
Mediation Deadline (ECF No. 93, ¶ 4.c)	September 30, 2024
Close of Expert Discovery (ECF No. 93, ¶ 9.b)	December 2, 2024
Submit Joint Status Letter (ECF No. 93, ¶ 13.b)	September 13, 2024
Pre-Motion Conference Regarding Anticipated Dispositive Motions (ECF No. 93, ¶ 13.c)	December 16, 2024

c. HBL's Investigation of the 349 Undetermined Accounts

HBL's Position: HBL already has made substantial progress towards satisfying the Court's directive and is diligently endeavoring to produce the customer account records within the next several weeks.

At the May 21 status conference, the Court instructed the parties to "start the [monthly status] letters off on a more positive note," and avoid "the protracted letter-writing campaigns where you go back and forth arguing with each other." May 21, 2024 Tr. 57:11-19. HBL endeavored to comply, proposing to start this letter on a fresh page without carrying over argumentation from the prior letters and drafting straightforward updates on the 349 Undetermined Accounts. Rather than exercising reasonable restraint, Plaintiffs' initial response overall was over 17 pages of single-spaced argumentation and turned this particular update into a hotly contested section where no dispute should lie. This approach has precipitated bloating this letter to nearly 60 pages. HBL regretfully responds to each point to ensure an accurate record.

Following discussion at the May 21, 2024 status conference regarding the first portion of Plaintiffs' February 2, 2024 motion to compel (ECF No. 210), the Court ordered:

> [T]he parties are directed to meet and confer about production of "Know Your Customer" ("KYC") data for the 349 accounts involved in processing U.S. dollar transactions for the applicable time period, and propose a procedure and timetable for producing KYC data in their next joint status letter due May 31, 2024.

ECF No. 259 at 1. At the status conference, the Court was careful to explain its use of the phrase "KYC" in respect of the Undetermined Accounts:

> THE COURT: . . . we had looked at the motion to compel that relates to customer account records for 33 individuals, which we have been calling internally KYC documents. Can we call it that . . . ?
>
> MS. DeLELLE: That would be a correct way to refer to it.
>
> THE COURT: KYC documents.
>
> MS. DeLELLE: That's right. And your Honor, it's 33 hits 33 names that have generated hits.
>
> THE COURT: I'm just trying to get — so, Ms. Nicholson, is it OK if we refer to them as KYC docs?
>
> MS. NICHOLSON: That's fine with me as long as we just understand that to include all account opening records and kind of identification documents that come with KYC, but I think that's a fair characterization.

May 21, 2024 Tr. 15:20-16:11. Consistent with the Court's directive, HBL has embarked on the task of attempting to collect the "account opening records and . . . identification documents that come with KYC" for those 349 accounts in 90 different branches located in Pakistan, Afghanistan, and the United Arab Emirates. *Id.* 16:9-10.

Counsel for HBL has been in frequent communication with HBL Head Office over the past week to develop and begin implementing a plan to collect hard-copy files associated with the 349 Undetermined Accounts that processed transactions through New York during the time period applicable to discovery, as ordered by the Court. *See* ECF No. 259. HBL is endeavoring to have an initial tranche of information ready for production in mid-June before the Muslim holiday of Eid al-Adha. Counsel for HBL is aiming to make at least a preliminary production, if not complete production, of KYC account-opening data by June 19, 2024.

As noted above, the parties have been negotiating an agreement on revisions to the Protective Order to address HBL's concerns about producing customer account information for potential false-positive customers.

At the May 21 status conference, the Court also ordered HBL to create "some sort of an index for each hit on whether files exist, what exists, and where they're located." May 21, 2024 Tr. 44: 24-45:1; *see also id.* 45:7-10 ("HBL provides some kind of an index akin to a name, rank, and serial number for each of these hits: Where are they located? What might be there? And then we can argue about that."). The parties have agreed upon a proposed Index regarding the KYC files available for the 349 Undetermined Accounts, which will include any KYC data to the extent its exists from HBL's centralized system. HBL's production anticipated by June 19, will also include any such data.

Plaintiffs, however, also are demanding production of ***all transactional records*** associated with the 349 Undetermined Accounts at the same time HBL makes it KYC data production. Plaintiffs assert that transactional data will aid the true- or false-positive match determination, but this is incorrect — the KYC data will do that. To be clear, HBL has every intention of providing transactional data as soon as the parties agree on what, if any, accounts among the KYC data are apparent true-positive matches.

HBL's position is that this demand for transactional data now as part of the KYC exercise — which could be multiple thousands of transactions if not more — puts the cart before the horse and exceeds the Court's instructions. The purpose of collecting the hard-copy files associated with these 349 accounts is to enable an evaluation of whether any account might be an apparent true positive, despite this being statistically unlikely. Plaintiffs have no basis to presume what would be a "more efficient process" for HBL. In fact, a structured production of transactional data would require pulling from multiple different databases located in Pakistan, naturally a separate exercise from the exercise HBL is diligently undertaking in respect of the 90 branches. This data would need to be extracted, validated, and linked to produce a meaningful record for each account — a process that can take several weeks. HBL is confident that it can produce any transactional data associated with any apparent true-positive matches by the end of June.

HBL respectfully submits that it should not be required to conduct this process before the parties agreed on what constitutes false positives among the KYC data collected as the Court directed.

Plaintiffs: The only unresolved issue relating to the 349 hits is that HBL has stated it is not producing as part of its June production set any transactional data for the 349 accounts. Plaintiffs have not turned this into a "hotly contested" issue. They merely seek the complete information relevant to making a "true positive" determination.

Plaintiffs maintain—as they explained at the hearing—that the transactional data for these accounts also would contain information relevant to the true positive determination. *See, e.g.*, 5/21/24 Tr. at 38. For example, if an account that matches the name of the founder of LeT shows transactions being processed to other members of LeT, that would support that it is a "true positive" regardless of whether the account opening records for the account have sufficient personal identifying information. *See id*. Plaintiffs thus believe the more efficient process is for HBL to produce the transactional data for these accounts at the same time as the account opening records to expedite this review. That is consistent with the Court's statement at the start of the conference that it would use the term "KYC docs for purposes of this conference" to refer to the records Plaintiffs have sought in their motion to compel relating to "the ***customer account records*** for 33 individuals," which includes both account opening records and transactional data. *See* Tr. at 16-17 (Court noting that "we had looked at the motion to compel that relates to customer account records for 33 individuals which we have been calling internally KYC documents"); *id*. at 45-46 (stating it will order HBL to produce "whatever documents exist of the 349 hits"); Dkt. 211 (Pltfs MTC) at 1 (identifying the first issue in the motion as "HBL account records that are an exact name match to 33 members and aliases") & 5-6 (describing the disputed discovery requests that seek this data and that include both account opening records and documents reflecting funds transfers for those accounts). If transactional data is not produced as part of HBL's June production, then Plaintiffs believe such data must be produced promptly after HBL's June production for all of the 349 accounts for which HBL has ***not*** identified additional customer information that definitively shows the account is a false positive.

d. HBL's Efforts to Transmit Letters Rogatory to the UAE

HBL has transmitted to the U.S. Department of State the package of materials required to accompany the Letters Rogatory request that the Court signed on May 22, 2024. *See* ECF No. 261. HBL will report to Plaintiffs and the Court as this process progresses.

e. Deposition Scheduling

The parties are in the process of rescheduling the depositions of the four Bellwether Plaintiffs that were at issue in Plaintiffs' motion for a protective order (Dkt. 244) and expect to complete that process soon. The parties also are continuing to discuss whether they can reach an agreement on the deposition cap.

II. Discovery Issues for Which the Parties Are at an Impasse and That Were Not Resolved at the May 21, 2024 Status Conference

f. Plaintiffs' Discovery Disputes with KPMG, A&M, and NY DFS Premised on HBL's Relevance Objections Relating to Third Party Engagements

Plaintiffs: HBL confirmed during the parties' May 24, 2024 meet and confer regarding this status letter that it still intends to seek a protective order to preclude any further production of documents and communications relating to the third-party auditors that HBL engaged during the relevant time period to analyze, evaluate, and report on HBL's customer diligence, transaction monitoring, and other compliance practices relating to the allegations in this case. The sole basis for HBL's requested protective order is its new counsel's claim that the unproduced documents and communications relating to these third-party audit engagements—thousands of which are internal to the subpoenaed third parties and HBL has never seen—are not relevant.

Below, HBL claims Plaintiffs "conspicuously failed to put this [issue] before the Court at the May 21, 2024 status conference." That is incorrect. Plaintiffs not only put this issue on the agenda, Dkt. 259 at Item No. 3(ii)-(iii), they also raised it multiple times at the conference. 5/21/24 Tr. at 11:18-12:1, 15:11-19, 53:21-22, 59:23-60:2. The Court stated that it will either enter an order addressing HBL's relevance objections or seek additional briefing on the issue. 5/21/24 Tr. at 55:1-3 ("After this conference I'm going to try to see if there's some way I can deal with some of these on paper or direct some further information or additional briefing."). Given the issue remains outstanding as of the date of this status letter, Plaintiffs address it here.

HBL's relevance objection currently implicates the following third parties:

- **KPMG** is relying solely on HBL's new counsel's relevance objection to refuse to produce documents that KPMG otherwise was prepared to produce several weeks ago. Specifically, KPMG logged 1,398 documents as responsive to Plaintiffs' subpoena but that it withheld solely because the Regulators had not yet authorized their production. These logged documents consist of documents and communications relating to evaluations that KPMG performed of HBL in connection with the Regulators' examinations. On April 12 and 16, KPMG told Plaintiffs it was preparing to produce the documents it had logged because it had now received both the Federal Reserve's and NY DFS' authorization to do so. Then, on April 19, KPMG served a letter stating that it would not be producing any of those documents until the Court resolved the relevance objection that HBL raised in the April status letter (Dkt. 241). KPMG confirmed in a meet and confer on April 23 that if HBL's relevance objection is resolved in Plaintiffs' favor, KPMG will produce them and has no independent objection (relevance or otherwise) to producing the withheld documents.

- **Alvarez & Marsal ("A&M")** likewise is relying solely on HBL's new counsel's relevance objection to refuse to produce documents it otherwise was prepared to

produce several weeks ago. A&M failed to timely serve written responses and objections to Plaintiffs' subpoena, waiting over four months to do so. In those late responses, A&M did not object to any of Plaintiffs' specific requests on relevance grounds and stated it was not producing responsive documents solely because the Regulators had not yet authorized their production. Following the Federal Reserve and NY DFS' February and March authorization letters, Plaintiffs asked A&M to confirm it would proceed with its productions. Following a meet and confer, A&M agreed to produce materials exchanged with HBL and asked Plaintiffs to agree to search terms that could be applied to the remaining documents that were internal to HBL. The parties then proceeded to exchange search terms and hit counts from April 19 – April 25. Then, for the first time on April 30, A&M claimed that it would not be reviewing or producing any documents (including the ones it already agreed to produce) because HBL had stated in the April status letter that it is objecting to the relevance of the third party engagements. Again, A&M never raised any independent relevance objection in response to any of Plaintiffs' subpoena requests.

- The **NY DFS** has relied on HBL's new counsel's relevance objections to refuse to authorize the same materials the Federal Reserve has authorized. The NY DFS has taken this position even though HBL's relevance objection is limited to third party engagements and the materials that the NY DFS has not authorized are far broader, encompassing the remaining categories on HBL's categorical log (Dkt. 115-1). In particular, the NY DFS has not authorized the production of the requested work product and communications underlying all third-party engagements relating to HBL's customer diligence, transaction monitoring, and other compliance practices. Rather, it has authorized such materials for only a subset of those engagements that relate to specific third parties. This means that while the Federal Reserve has authorized all CSI in HBL's possession, HBL has not produced all of that CSI because the Federal Reserve's and NY DFS' authorizations are not coterminous.

Accordingly, Plaintiffs seek the same categories of third-party engagement materials that they are receiving for a subset of the third-party engagements (e.g., FTI) for the rest of the relevant engagements, namely: (1) the logged materials KPMG has withheld solely based on HBL's relevance objections; (2) the materials A&M has withheld solely based on HBL's relevance objections: and (3) the NY DFS' authorization of the production of the remaining relevant third party auditor engagements that the Federal Reserve has authorized.

HBL's description of this dispute is inconsistent with the parties' status letters and meet and confer. Plaintiffs have not "in this letter revived an outlandish argument that HBL should review for

production every document that hits upon a consultant's name."[1] Similarly unfounded is HBL's suggestion that Plaintiffs have sought engagements relating to "cybersecurity" or "market liquidity." HBL's own response cites the relevant discovery request that makes clear the dispute concerns engagements relating to "HBL's action or inaction relating to AML requirements, KYC requirements, Customer Due Diligence practices, risk management processes, and/or monitoring for suspicious activity." Again, this is a discrete set of third-party engagements that HBL's prior counsel already agreed are responsive to Plaintiffs' discovery requests. Plaintiffs simply ask that HBL not be allowed to block the completion of the productions of these materials.

HBL's relevance objections fail for at least the following three reasons: (1) they are waived; (2) HBL does not have standing to seek a protective order as to third parties on relevance grounds; and (3) to the extent the Court entertains HBL's belated relevant objection, the documents Plaintiffs seek indisputably satisfy Rule 26's "extremely broad concept" of relevance—just as HBL's prior counsel, the subpoenaed third parties, and the Court already agreed. *In re Terrorist Attacks on Sept. 11, 2001*, 2021 WL 5449825, at *2 (S.D.N.Y. Nov. 22, 2021) (citation omitted). Plaintiffs thus ask that the Court enter an order rejecting HBL's relevance objections or otherwise direct HBL to brief the issue within one week so this matter can be promptly resolved.

(1) HBL's Relevance Objections Are Waived. The timeline of HBL's conduct relating to the at-issue discovery speaks for itself and the message is clear: this late relevance objection is waived.

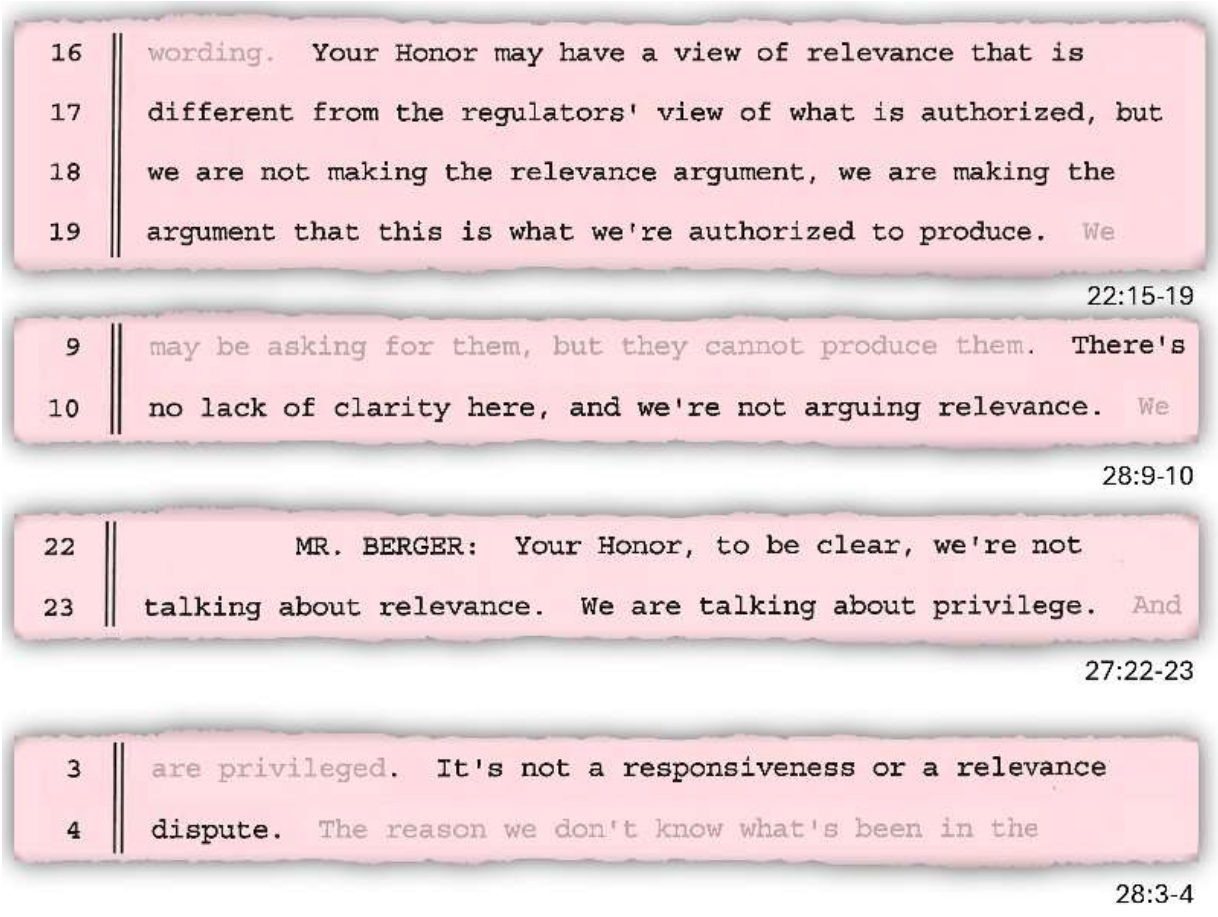
HBL's prior counsel agreed to produce documents relating to any third-party investigation, review, or study of HBL's action or inaction relating to AML requirements, KYC and Customer Due Diligence, and/or transaction monitoring in written discovery responses and correspondence served over a year ago. HBL's new counsel has suggested that HBL's prior counsel agreed only to produce documents relating to investigations "identified in the Complaint." That is wrong. HBL's prior counsel expressly agreed in written correspondence that it was not limiting its collection to engagements identified in the Complaint and then provided Plaintiffs a list of the engagements it had determined are responsive and discussed them on the record with the Court. *See* Dkt. 220, Ex. 3 (2/16/23 HBL Ltr) at 9 (confirming HBL "has not yet produced, but will produce, responsive, non-privileged third-party documents identified through search strings intended to capture the work product of the parties that audited HBL" during the relevant time period); 7/18/23 Tr. at 8-9 (describing the engagements).

HBL's prior counsel then asked the Regulators to authorize the production of those precise materials. The Regulators refused on the basis that they are protected by the CSI and bank examination privilege, prompting HBL to identify these third-party materials on its March 20, 2023 categorical log. *See* Dkt. 115-1 (identifying, e.g., "documents and communications with or relating to third parties retained under or resulting from written agreements and consent orders

[1] Indeed, that statement makes no sense when HBL has claimed elsewhere that it never collected documents based on "a consultant's name" and only used it as a way to generate the FTI Index. *See, e.g.*, Dkt. 241 at 10.

between HBL and its [regulators],” “non-final (e.g. interim, preliminary or draft) reports generated by third-party entities,” and “documents and communications created or prepared for third-party entities”).

Plaintiffs challenged the Regulators’ privilege claims over these materials, prompting a conference in May 2023. During that conference and as copied below, HBL’s prior counsel confirmed—consistent with its representations to Plaintiffs—that it is not contesting the relevance of these third-party materials and instead is withholding them solely on the basis that HBL was not yet authorized by the Regulators to produce them. HBL’s reliance below on the ***Regulators’*** statements at that hearing regarding “responsiveness” do not change this.



16 wording. Your Honor may have a view of relevance that is
17 different from the regulators' view of what is authorized, but
18 we are not making the relevance argument, we are making the
19 argument that this is what we're authorized to produce. We

22:15-19

9 may be asking for them, but they cannot produce them. There's
10 no lack of clarity here, and we're not arguing relevance. We

28:9-10

22 MR. BERGER: Your Honor, to be clear, we're not
23 talking about relevance. We are talking about privilege. And

27:22-23

3 are privileged. It's not a responsiveness or a relevance
4 dispute. The reason we don't know what's been in the

28:3-4

During that same conference, the Court expressed skepticism of the Regulators’ claim that Plaintiffs should receive only the final auditor reports as opposed to other documents and communications relating to the same, explaining that comments and responses relating to such reports are “directly relevant and core and central to this case.” 5/25/23 Tr. at 15:16-19. The Court then ordered HBL to serve an “itemized privilege log for categories 4, 6, and 8 through 11” of its

categorical log, which encompassed all of the documents and communications that HBL was withholding as CSI that related to the third-party engagements. Dkt. 133 (ordering the itemized privilege log); 5/25/23 Tr. at 49:13-17.

Following the May conference, HBL selected search terms to identify the documents it had withheld under categories 4, 6, and 8-11 of its categorical log. *Contra* Dkt. 207 at 5 (incorrectly accusing Plaintiffs of creating a "crude search"). Through that process, HBL identified approximately 957,000 documents from 44 CSI engagements that required logging, Dkt. 137, out of a total of 2.2 million "hits." 7/18/23 Tr. at 8:20-22. Given the volume, HBL requested that it be allowed to supply an index of the withheld documents from only one of the 44 CSI engagements (with FTI) as a starting point. *Id*. at 6:19-24. The Court agreed to use the index as a test case, which it stated would result in "a finding that could be applied to the other [withheld] documents." *Id*. at 28-29. Then, on December 22, 2023, the Court held that ***none*** of the documents from the FTI index were privileged and noted there was no relevance dispute as to such materials. Dkt. 194. That Order prompted the Federal Reserve in February to authorize ***all CSI*** in HBL's and third parties' possession and the NY DFS in March to authorize CSI relating to a specific handful of engagements.

Having lost the CSI privilege fight and on the tails of the Federal Reserve's February authorization letter, HBL's new counsel raised a brand-new relevance objection to these third-party engagement materials that it forced Plaintiffs to litigate for over a year solely on privilege grounds. *See, e.g.*, Dkt. 241 at 11. Specifically, HBL claimed that any additional but unspecified documents relating to these third-party engagements are "patently irrelevant." *Id*.

This is not how discovery works. HBL had an opportunity to raise relevance objections to these materials and stated on the record multiple times that it was not contesting their relevance. HBL "cannot litigate their claims in a piecemeal fashion, objecting on the grounds of privilege first" and "then raising relevance after their claim of privilege has been denied." *Sokolow v. Palestine Liberation Org*., 2013 WL 5943990, at *2 (S.D.N.Y. Nov. 4, 2013). Indeed, this District has squarely rejected such tactics on directly analogous circumstances:

> Defendants have done precisely what is forbidden in this District: rather than treating the July 26 Order as a directive, Defendants have regarded it as the beginning of a new conversation in which they apparently feel entitled to advance new legal theories. Defendants had the opportunity to raise their objections to the production of the GIS documents on relevance grounds. They failed to do so. Similarly, they had the opportunity to bring a motion for reconsideration of the July 26 Order. They did not. Defendants cannot litigate their claims in a piecemeal fashion, objecting on the grounds of privilege first, reasserting privilege again, then raising relevance after their claim of privilege has been denied.

Id. This Court should reject such tactics here. Because HBL's relevance objections to the materials are waived, the Court should deny them on this basis alone.

(2) HBL Has No Standing to Raise a Relevance Objection to Materials Held by the Subpoenaed Third Parties. HBL's counsel confirmed on the parties' May 24, 2024 meet and confer that its requested protective order as to the subpoenaed third parties is based solely on relevance grounds. HBL then stated on Thursday (May 30) in providing responsive edits to this letter that it does not actually seek a protective order as to the subpoenaed third parties but that HBL's relevance objection impacts documents in KPMG and A&M's possession. It is unclear why. The documents KPMG and A&M are withholding are the same types of work product and correspondence that HBL did not object to producing for FTI and other third parties ***and that KPMG and A&M have not independently objected to producing on relevance grounds***.

Plaintiffs have yet to receive or see any authority that would authorize (a) HBL to seek a protective order for a subpoenaed third party on relevance grounds under these circumstances, or (b) that would enable the third parties to withhold productions based on a protective order that HBL intends to seek only on its own behalf.

It is well settled that "[a] party lacks standing to challenge subpoenas issued to non-parties on the grounds of relevancy or undue burden." *See, e.g.*, *Universitas Educ., LLC v. Nova Group, Inc.*, 2013 WL 57892, at *5 (S.D.N.Y. Jan. 4, 2013). Neither of HBL's cited two cases supports standing for a now-closed New York bank to challenge audit materials and communications concerning the bank's compliance and transaction monitoring that occurred years ago. *See Pegaso Development Inc. v. Moriah Education Mgmt. LP*, 2020 WL 6323639, at *4-5 (S.D.N.Y. Oct. 28, 2020) (rejecting entity defendant's claim that it has standing to pursue a subpoena on relevance grounds to JP Morgan for financial records relating to the entity because it failed to identify cognizable privacy interest).

And if HBL no longer intends to seek a motion for a protective order on the third parties' behalf, there is no basis for the third parties to withhold their productions. They have made no independent relevance objection. They cannot withhold documents based on a general relevance objection HBL has raised regarding third party engagements when there is no actual pending request that would prevent these specific third parties from complying with their subpoenas.

(3) Materials Relating to the Third-Party Engagements Are Directly Relevant. HBL's claims that these third-party engagements were "routine auditing or consulting work" and that the final audit reports "contain everything Plaintiffs need," Dkt. 241 at 10, were rejected by the Court when it ordered HBL last summer to provide an itemized log of all third-party auditor materials without limitation to final reports. Dkt. 133 (ordering the itemized privilege log for all third-party engagement materials HBL was withholding, including documents and communications relating to the same); Dkt. 148 (ordering an index of a subset of these materials relating to FTI).

There is nothing "routine" about HBL retaining 44 different CSI engagements over a 13-year period to address what the Regulators described as repeated and knowing compliance failures that "***open[ed] the door to the financing of terrorist activities that pose a grave threat to the people***

of this State."[2] Nor is there anything routine about the fact that those very audits and examinations resulted in the NY DFS fining the bank 225 million dollars and directing the closure of its sole U.S. branch. Those audits flagged the precise terror financing and deficient compliance controls that Plaintiffs have alleged from the outset, including, e.g.:

- FTI found that in just a fraction of the relevant time period, HBL [redacted]
- KPMG found, e.g., that HBL had [redacted]; and
- A&M relatedly found that HBL's transaction monitoring was [redacted] This is not a "blatant mischaracterization" as HBL claims—it is a verbatim recitation of the auditor's findings:

[redacted]

[2] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1709071.

[redacted]

KINGHBL00658254 (emphasis in original). HBL's claims that it remediated any of these issues is also wrong: they are the same exact issues cited just a year later in the Statement of Charges by the NY DFS that ultimately led to the bank's closure.

Further, HBL's continued claim that "OFAC gave HBL a clean bill of health" has been confirmed false by HBL's prior counsel, HBL's own documents, and OFAC itself. HBL's prior counsel originally made this claim early in the case based on one "OFAC No Action Letter." Plaintiffs, throughout discovery, demanded that this letter and the related correspondence be produced. HBL's prior counsel initially agreed to produce the letter but not the underlying correspondence. When pushed, HBL's prior counsel informed Plaintiffs that the underlying correspondence showed that OFAC's decision to take "No Action" referred only to [redacted] and that HBL never provided OFAC the entirety of the transactions processed during the relevant time period or reviewed by the auditors. KINGHBL00583099. OFAC's counsel has since confirmed to Plaintiffs that its decision not to pursue the handful of transactions that were reported to it in no way represents a finding by OFAC that HBL has engaged in no improper conduct, as HBL's new counsel continues to baldly claim.

Also unavailing is HBL's position that the documents and communications in its recently authorized productions are "cumulative" of these auditors' findings (Dkt. 241 at 7):

First, Plaintiffs have explained from the outset that the third-party auditors' final reports do not include the full factual information that undergirds the final conclusions, including the transactional data (e.g., message IDs, account numbers, and related information), witness interviews, and customer diligence files. *See, e.g.*, Dkt. 128 at 4.

For example, HBL's productions in May included versions of [redacted] a finding that is at direct odds with the position that HBL has taken elsewhere in this case that individuals have to be designated in order to support liability under the ATA. HBL's recent productions also include its responses to these third-party engagements in which HBL expressly acknowledges specific deficiencies and gaps in its systems that it

subsequently fails to remedy. Again, these are the precise types of information that the Court already held are "directly relevant and core and central to this case." 5/25/23 Tr. at 15:16-19. ***Second***, final reports were subject to changes at HBL's request, including changes that resulted in differences in ratings. Dkt. 128 at 4-5. For example, HBL's productions to date show that it [redacted] Such back and forth between HBL and its third-party auditors likewise are relevant to HBL's scienter.

Third, the correspondence relating to these third-party engagements contain information never presented in the final reports—a fact that has been confirmed by nearly every third-party production to date. For example, one auditor recommended via e-mail that HBL contact the [redacted] Dkt. 128 at 5. Another email notes the auditors [redacted] *Id.*

HBL's position below that these types of underlying factual materials should be produced for only ***some*** third-party engagements (e.g., FTI) and not others remains unsupported. As HBL's counsel admitted on the parties' meet and confer, the NY DFS has not authorized the production of work product and communications relating to the majority of the consultants HBL identifies below—e.g., AML Partners, Televance, Fidelity Information Systems, and Misys/Finastra—which means their "correspondence and work papers" have ***not*** been produced unless they were given to an auditor whose work was authorized (e.g., FTI). *Contra* HBL's Position *infra* (suggesting "correspondence with and work papers of the aforementioned consultants" have been produced). AML Partners and Telavance, for example, conducted reviews of HBL's compliance systems and transaction monitoring software that placed HBL on notice of the issues that the Regulators continued to document years later as opening the door to terror financing. FIS and Misys/Finastra are providers of that transaction monitoring software that also conducted their own independent analysis of how HBL was utilizing that software and whether HBL had implemented the proper rules and filters to capture transactions involving terror financing.

All of this is directly relevant to show HBL's knowledge of the critical gaps in its compliance systems that enabled HBL to finance the terrorist activities alleged here but that HBL refused to remedy. *Wultz v. Bank of China Ltd.*, 61 F. Supp. 3d 272, 289-290 (S.D.N.Y. Apr. 9, 2013) (holding that documents and communications that "may show whether [the bank] had notice of criticisms of its AML/CTF practices, and if so, how it responded to such notice" is directly relevant to liability under the ATA). That HBL was notified of these gaps, failed to correct them, and knowingly allowed those gaps to facilitate terror financing is relevant to its awareness of "its role in an overall illegal activity from which the act that caused the plaintiffs injury was foreseeable." *Honickman v. BLOM Bank SAL*, 6 F.4th 487, 497 (2d Cir. 2021). Indeed, specifically "[b]ecause there is rarely direct evidence of a defendant's mental state, the fact finder often must draw inferences from circumstantial evidence," including circumstances where, as here, it "defie[d] credulity that [the defendant] did not know that something illegal was afoot." *Bernhardt v. Islamic*

Republic of Iran, 47 F.4th 856, 867 (D.C. Cir. 2022). HBL's suggestion below that *Twitter* changed these basic principles was rejected by the Court when it denied HBL's motion for reconsideration on that basis, *King v. Habib Bank Ltd.*, 2023 WL 8355359, at *1-3 (S.D.N.Y. Dec. 1, 2023), and HBL's motion for interlocutory appeal regarding the same, Dkt. 198.

HBL's contrary position is premised on the improper assumption that discovery relating to the third-party engagements must prove ***all*** elements of Plaintiffs' claims. *See, e.g.*, Dkt. 241 at 10. But that improperly "conflates what is required . . . to establish ***liability***," with "Rule 26's less exacting ***relevance and proportionality standards***." *Miller v. Arab Bank*, 2023 WL 2731681, *5 (E.D.N.Y. Mar. 31, 2023). There can be no dispute that these third-party engagement materials meet the latter standard. Accordingly, the Court should reject HBL's new counsel's relevance objections or otherwise order that HBL brief the issue within one week.

HBL's Position: Plaintiffs Are Pursuing Discovery Far Beyond Anything Reasonably Contemplated Under Fed. R. Civ. P. 26(b). HBL Respectfully Seeks a Protective Order.

1. After HBL has finished producing all relevant consultant-related documents in its possession (over 600,000 pages involving at least 13 consultants), including documents previously withheld on CSI grounds, Plaintiffs in this letter revived an outlandish argument that HBL should review for production every document that hits upon a consultant's name — i.e., every single document involving or concerning that consultant, irrespective of the nature of the engagement or the nature of the document.

2. This demand targets information incredibly far afield from anything reasonably contemplated under Rule 26 of the Federal Rules of Civil Procedure or that could establish any element of ATA liability. HBL has dutifully complied with its discovery obligations and has patiently and in good faith engaged with Plaintiffs on the parameters of their requests for more than 18 months. But after Plaintiffs conspicuously failed to put this position before the Court at the May 21, 2024 status conference, and dodged HBL's request at the May 24 meet and confer to identify what, if any, additional consultant-related documents Plaintiffs were seeking, HBL is surprised and disappointed to now have to respond in this joint status letter to Plaintiffs' seven single-spaced pages of rhetoric on this issue. Plaintiffs substantial focus on this tangential issue all but solidifies the ill-founded nature of Plaintiffs' ATA claim.

3. To provide the Court an accurate record, HBL summarizes below the relevant facts and addresses in turn each of the points in Plaintiffs' portion of the letter.

4. HBL made clear to the Court at the May 21 status conference that it has produced all consultant-related information conceivably relevant to the issues in this case, including all information previously withheld as CSI. *See* May 21, 2024 Tr. 9:17-20. The categories of information HBL already has produced include:

a. Final reports of consultants hired as a result of regulatory reviews or investigations, namely: **KPMG, FTI, Accume, Alvarez & Marsal, Mercadien, AML Partners, Televance, Accuity, DataKentro, Fidelity Information Systems, Misys/Finastra, Mizen Group, and Deloitte**;

b. Engagement letters with the aforementioned consultants;

c. Correspondence with and work papers of the aforementioned consultants including correspondence and information provided in response to Requests for Information (RFIs), RFI tracking charts, and supporting work papers related to their engagements; and

d. Meeting minutes related to consultant engagements and compliance issues.

5. Plaintiffs' portion of this letter misrepresents HBL's stance. To be clear, HBL ***is not withholding relevant information on the basis of CSI***. Plaintiffs allude to the scope of the DFS's waiver, but HBL still is at a loss to understand what outstanding information Plaintiffs think exists or would be relevant to their requests despite repeatedly asking Plaintiffs to provide specifics. HBL also is not taking a position on the relevance determinations that consultants must make as to individual documents and communications in their possession but the Court's ruling in respect of this dispute will almost assuredly provide those consultants with guidance they may need.

6. HBL's position is as follows: HBL satisfied its obligation to respond to Plaintiffs' specific discovery request that bears on consultant documents (described below). Plaintiffs have not met their burden of establishing that any additional information is relevant. *See Fireman's Fund Ins. Co. v. Great Am. Ins. Co. of New York*, 284 F.R.D. 132 (S.D.N.Y. 2012) (denying in part motion to compel where "burden of demonstrating relevance [was] on the party seeking discovery" and the party failed to establish relevance).

7. HBL ***has sought but been unable to obtain clarity from Plaintiffs on what additional information they are seeking***.

a. When the parties met and conferred on this for the first time on May 24, HBL asked Plaintiffs to identify what additional documents they believed they required and why. Plaintiffs' only response was to point to the Court's comments from a year ago about email exchanges with consultants that were ***produced more than a year ago***. *See* May 25, 2023 Tr. 15:16-19. The email exchanges in question concerned issues that the consultants deemed [redacted]" as they involved "[redacted]" ECF No. 128-9 at 1. Another exchange concerns language in an audit report ***that was passed on to the regulators*** (not withheld as Plaintiffs falsely suggest, *see* ECF No. 128 at 5), and that one individual at the bank "[redacted]" ECF No. 128-3. A third example involves a request to remove a reference to [redacted]

[redacted]. *See* ECF No. 128-4 at 1.

b. These exchanges document HBL's diligent engagement with its outside consultants and regulators but they do not support a broader fishing expedition for ***additional*** emails, draft work product, or ancillary communications about non-BSA/AML work that consultants routinely must perform. For example, what does a cybersecurity audit have to do with Plaintiffs' claims? Of course, the answer is absolutely nothing. There are countless other examples like this, but Plaintiffs assert generally they want it all. But discovery is not so indiscriminate and undisciplined.

c. Rather than discuss the scope of their request with HBL directly, Plaintiffs appear to be improperly using this status letter process to hone their position through successive drafts. Nonetheless, the information described in Plaintiffs' portion of the letter remains woefully inadequate to warrant continued expansion of the already excessively broad scope of discovery.

d. Plaintiffs' portion of this letter also refers to FTI's [redacted] but Plaintiffs ***have had those lists since March 2023***. They are wasting this Court's valuable resources. Plaintiffs' suggestion that they require ***each draft version of these lists*** is wildly disproportionate and can only lead to impermissible case-within-a-case evidence that would consume immense resources while offering negligible probative value at best. *See, e.g.*, *Perez v. Consol. Edison Co. of New York*, No. 02 CIV. 2832 (SAS), 2003 WL 22586492, at *2 (S.D.N.Y. Nov. 7, 2003) (denying discovery into records of prior investigation where plaintiff incorrectly argued that "any complaint—and ***every document in the accompanying investigative file***" be deemed relevant but was "unable to point to anything in [the prior investigative complaint] (or elsewhere) to indicate that the incident it describes was connected to" plaintiffs' claims) (emphasis added). Such discovery would never ultimately be admissible in any event. *See Beastie Boys v. Monster Energy Co.*, 983 F. Supp. 2d 354, 358 (S.D.N.Y. 2014) (excluding evidence of prior alleged infringement where, to establish other infringement actually occurred, the court would need to conduct "the paradigmatic 'trial within a trial' that [Federal Rule of Evidence 403] disfavors") (collecting cases).

8. Stepping back, ***there is no dispute*** that the regulators identified gaps in HBLNY's compliance programs, and that HBL was engaged in a continuous dialogue with the regulators and took action in response. Plaintiffs do not need residual documents "to show HBL's knowledge of the critical gaps in its compliance systems." Knowledge of compliance gaps moreover cannot establish that HBL "associate[d]" itself with a terrorist "venture," that it "participate[d] in it as something that [HBL] wishe[d] to bring about, that [HBL] s[ought] by [its] action to make it succeed." *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 490 (2023) (quoting *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949)).

a. While Plaintiffs purport to rely on pre-*Twitter* case law to suggest that they might establish the requisite mental state through knowledge of compliance gaps — which *Twitter* forecloses — none of *Honickman*, *Bernhardt*, or *Wultz* found the defendant's mental state established on that basis. To the contrary, *Honickman* and *Bernhardt* both affirmed dismissal because the plaintiffs ***failed*** to adequately plead even the threshold general awareness prong of ATA aiding-and-abetting liability.

b. Plaintiffs wrongly attempt to minimize *Twitter*'s impact even as just days ago, the U.S. Solicitor General urged the Supreme Court to vacate and remand another ATA decision so that the court of appeals may reconsider its ruling in light of *Twitter*'s framework. *See* Br. for the United States as Amicus Curiae, *AztraZenica UK Ltd. v. Atchley*, No. 23-9 (U.S. May 21, 2024). Judge Schofield's resolution of HBL's reconsideration motion and request to certify for interlocutory appeal applied standards particular to those motions. Judge Schofield did not (and could not) somehow reject *Twitter*'s standard.

9. ***HBL therefore respectfully requests Court intervention*** to prevent Plaintiffs from continuing to cite this issue as a crutch for not carrying forward depositions and wrapping up discovery in this case. Below, HBL responds to Plaintiffs' arguments in this letter.

10. ***HBL's relevance objections are not waived***. Plaintiffs ask the Court to ignore that their discovery pushes beyond any reasonable limit of discovery under Rule 26(b) based on an unsupported contention that HBL waived its ability to assert relevance objections through statements by counsel at a status conference addressing the scope of CSI privilege. This is nonsensical.

a. Plaintiffs again employ the familiar tactic of asserting that "HBL's prior counsel agreed" to an illogical course of action for which no evidence of such "agreement" ever materializes. *See* ECF No. 216 at 8; EECF No. 217 ¶¶ 17-18. Once again, this is an embellishment on what HBL actually agreed to search for and produce, so once again, HBL must correct the record with a restatement of relevant facts.

b. On November 28, 2022, Plaintiffs served requests for production of documents, including the following:

i. RFP 39: "All Documents and Communications relating to any study review, report, analysis, or investigation by international, U.S. federal, U.S. state, or Pakistani regulatory actors, or any private third party, since January 1, 2006, into HBL's action or inaction relating to AML requirements, KYC requirements, Customer Due Diligence practices, risk management processes, and/or monitoring for suspicious activity, including Terrorist Activity."

c. On December 28, 2022, HBL responded in relevant part as follows:

i. Response to RFP 39: "Subject to and without waiver of its objections to this Request, and to the extent consistent with the bank examination privilege, the SARs privilege, and its obligations under Pakistani law, HBL will produce non-privileged documents and information responsive to this Request ***for any study, review, report, analysis, or investigation named in the Complaint***, for the Relevant Time Period[.]"

d. HBL's relevance objections are not "brand new," as HBL explicitly objected to Plaintiffs' Requests for Production on relevance, burden, and proportionality grounds. *See, e.g.*, HBL's Responses and Objections to Plaintiffs' Amended First Set of Requests for the Production of Documents at 5 ("HBL objects to the Requests to the extent that they are disproportionate to the needs of the litigation . . . . Specifically, HBL objects to the Requests that seek . . . 'any and all' documents and information from a category or type of source.'"); *id.* at 8 ("HBL objects to the Requests to the extent that they purport to require the production of 'all' documents or 'all' communications because such Requests are facially overbroad, unduly burdensome, and not proportional to the needs of this litigation. These requests seek documents that are not relevant to the claims and defenses asserted in this litigation.").

e. Plaintiffs' citation to *Sokolow v. PLO* is not on point. There, the court granted a motion to compel production of specific documents "listed" on defendants' privilege log. 2013 WL 5943990, at *1 (S.D.N.Y. Nov. 4, 2013). After the court so ordered, defendants sought a protective order excusing compliance with that order, citing solely privilege concerns. *After* denial of that reconsideration request, the defendants *again* sought reconsideration, that time on relevance grounds. *Id.* at *2. That opinion faulted the defendants for seeking to re-litigate production of documents on entirely new grounds after being ordered to produce the documents — it does not stand for a general proposition that relevance objections must precede privilege objections. And unlike in *Sokolow*, here, the Court ***denied*** Plaintiffs' motion to compel production of CSI (ECF No. 133), so HBL *is not* resisting a production order like the defendants in *Sokolow*.

f. Plaintiffs also suggest that HBL somehow "waived" its relevance concerns in preparing a categorical privilege log for CSI and presenting argument regarding CSI privilege at the May 25, 2023 status conference. This is incorrect. The log at issue (ECF No. 115-1) identified *categories of documents* — not individual documents. Indeed, the log was drafted *before* HBL's counsel had identified the universe of documents to be potentially withheld based on the categories identified therein. *See* May 25, 2023 Tr. 46:21-47:6. Plaintiffs cite no authority for the novel proposition that a *categorical* log could somehow concede the relevance of *individual* documents not identified on the log.

g. Plaintiffs highlight statements by HBL's counsel at the May 2023 conference, as if they could abrogate HBL's formal written discovery responses. They cannot. In any event, the statements Plaintiffs selectively quote *are not* relevance concessions. At that status conference, the Court had admonished that it wanted to hear about the CSI privilege, ***not the relevance*** of potentially privileged materials. May 25, 2023 Tr. 24:5-6 ("We are here to talk about privilege, and you all keep bringing it back to relevance determinations."). HBL's counsel acknowledged that this was the Court's focus in the statements Plaintiffs quote.

    i. Indeed, elsewhere in the same transcript, HBL's counsel discussed the need to make responsiveness determinations as to these very documents. *See, e.g.*, *id.* 21:14-16 ("In terms of the guideposts, Mr. Jabbour is referring to responsiveness determinations."); *id.* 21:22-23 ("[I]f it is internally clear from the context that it is dealing with the draft report, then that is not responsive."). The question of relevance was far from settled, as counsel for the regulators emphasized. *See id.* 23:24-24:4 ("It may not only be the questions about whether the final reports themselves have any relevance to this case, but we have even more questions that deal with beyond that, like what possible relevance does all this back and forth have between HBL and either the regulators or their auditing firms.").

h. In sum, HBL properly and timely responded and objected to Plaintiffs' request for consultant documents. HBL's separate statements, taken out of context at a status conference concerning privilege issues, did not waive any properly asserted objection.

i. Plaintiffs' description is further inaccurate because it falsely suggests that the 957,000 documents are "out of a total 2.2 million 'hits.'" The 2.2 million was not a total population of documents — it was the number of times that one of the consultant names hit on a term *in* a document. The number of documents comprising those hits was 957,000. *See* ECF No. 137 at 1-2. Plaintiffs' mischaracterization gives the inaccurate impression that HBL already had culled 2.2 million hits to a population of 957,000 somehow tailored to the case — but this never happened. In any event, 2.2 million and 957,000 are both statistics completely beside the point of devising a workable path forward on discovery and, to reiterate, HBL has produced ***hundreds of thousands of documents*** from that population fully consistent with Rule 26(b).

j. Plaintiffs' description reveals a final critical misconception: The mere fact that a document contains CSI ***does not mean that it is responsive, much less relevant***. Thus, the fact that the regulators have broadly authorized production of CSI does not resolve HBL's threshold objection to producing patently irrelevant and non-responsive information. For example, HBL should not be required to produce

consultant materials involving reviews of HBL's vendor management, market liquidity, cybersecurity, or information technology controls.

11. ***Plaintiffs' standing argument is incorrect, and also misconstrues HBL's requested relief***.

a. Again, as clarified above, HBL is not purporting to challenge the subpoenas to KPMG and A&M. HBL's position is that the question of relevance of documents in HBL's possession applies equally to the relevance determinations that subpoenaed consultants must make. If the Court is to resolve this relevance issue as to document in HBL's possession, this also impacts documents in KPMG and A&M's possession.

b. In any event, there is no doubt that HBL *would* have standing to challenge subpoenas to non-parties that target information of HBL in those non-parties' possession. *See In re Flag Telecom Hldgs, Ltd. Sec. Litig.,* 2006 WL 2642192 at *2 (S.D.N.Y. Sept. 13, 2006) (holding plaintiff had standing to challenge on relevance grounds a subpoena served on KPMG targeting plaintiff's financial records); *Refco Grp. Ltd., LLC v. Cantor Fitzgerald, L.P.*, 2014 WL 5420225 (S.D.N.Y. 2014) (concluding that defendant had standing to object to a subpoena served on Ernst & Young that could require production of personal financial records).

12. ***The materials Plaintiffs purport to seek are irrelevant and improper under Rule 26(b)***.

a. HBL explained above that additional residual documents that merely hit on the name of a consultant — the specific parameters of which Plaintiffs refuse to define — are not relevant to Plaintiffs' ATA claims. None of the additional points raised in Plaintiffs portion of this letter establish the relevance of such documents, not to mention that reviewing them would not be remotely proportional to the needs of the case at this late stage in the discovery process.

b. In the first instance, the Court has *not* already considered and reached a conclusion on the relevance of these documents, as Plaintiffs falsely contend. The Court *denied* Plaintiffs' motion to compel on the issue of CSI more than a year ago (ECF No. 133), and then ordered HBL to produce a subset of materials related to FTI, the only consultant referenced (albeit indirectly) in the Complaints (ECF No. 194). There is no Court order addressing the relevance of residual documents that hit on the name of a consultant.

c. Nor do Plaintiffs establish relevance with their new suggestion that HBL's very retention of these consultants is somehow sinister and worthy of discovery. This is incorrect, is not a theory referenced in the Complaints, is not a theory that conceivably could support ATA liability, and is not reasonably verifiable within the scope of this litigation. Plaintiffs seek to use the discovery process reconstruct

each incremental step in the regulator and consultant investigations, the paradigmatic and improper "trial within a trial." *Beastie Boys*, 983 F. Supp. 2d at 358.

d. Plaintiffs' selective quotations from unremarkable regulator and consultant reports fare no better. That HBL's compliance systems were not perfect should not be a strike against HBL in an ATA case — no bank's compliance systems are, and these reports are unrelated to the real issue in this case: whether HBL consciously and culpably participated in the terrorist attacks that injured the Plaintiffs. Of course, it did not and not a shred of evidence suggests otherwise, underscoring Plaintiffs' desperate ventures for discovery far afield from anything reasonably permissible under Rule 26(b). As discussed above, HBL already has produced scores of relevant documents related to the consultant engagements, and Plaintiffs' fishing expedition for some nonexistent smoking gun should not be allowed. As explained below, Plaintiffs' description of findings by FTI, KPMG, and A&M are inaccurate.

i. **FTI**: FTI did not find that HBL intentionally ignored problematic transactions or facilitated known terrorist transactions/activities. FTI determined that [redacted] for various and relatively benign reasons, such as the fact that a transaction amount is a round-number. FTI's transaction review ultimately ***did not find that HBLNY processed any transactions for individuals or entities sanctioned or designated for terrorism***.

1. Plaintiffs otherwise seem to confuse two separate issues that FTI discussed in its report, neither of which "enable[] [HBL] to evade sanctions." The [redacted] and in any event, FTI found that only [redacted] The [redacted] *See* KINGHBL00146304 at -73 [redacted] Despite Plaintiffs' attempt to insinuate otherwise, there is no evidence that [redacted]

2. If Plaintiffs' characterization were even remotely true (it is not), OFAC and other regulators would have cited violations as they have with many other financial institutions but they did not. Indeed,

OFAC gave HBL a clean bill of health. Plaintiffs dispute the significance of OFAC's "no action" letter but do not identify from whom at OFAC they purport to have received different information. Indeed, such information must be produced to HBL under HBL's previously served document requests (e.g., Doc. Request No. 172) forthwith. In any event, the document Plaintiffs cite makes clear that [redacted] With the publicity of the DFS and FRB compliance enforcement actions and the frequent collaboration between these enforcers and OFAC, it is implausible that OFAC would have closed an investigation with no action if there had been ***any evidence*** of illicit transactions or sanctions violations. And, of course, neither the DFS nor the FRB made any findings that HBL processed any transactions that violated the law, much less the counterterrorism laws.

ii. **KPMG**: HBLNY was committed to strengthening its transaction monitoring systems, and the regulators also emphasized the importance of configuring and tailoring rule criteria in HBL's transaction monitoring software. HBL engaged scores of consultants to design, test, and implement improvements to these systems and to identify and assess potential transaction monitoring blind-spots. KPMG's engagement fell into the latter bucket, and its report specifically concluded that [redacted]." KPMG's report, and other similar reports issued by other consultants HBL engaged, reflected the Bank's earnest efforts towards identifying and remediating issues with its systems. Plaintiffs imply that HBL was aware of the specific rule deficiencies identified by KPMG but that the Bank failed to remediate them, but this insinuation is utterly baseless. And, in any event, mere compliance failures cannot be evidence of conscious, culpable participation in the terrorist acts at issue here. *See Twitter*, 598 U.S. at 481 (affirming dismissal of ATA aiding-and-abetting claims based on social media companies' "fail[ure] to detect and remove" terrorist-affiliated accounts from their platforms); *Siegel v. HSBC Bank USA, N.A.*, No. 17-cv-6593, 2018 WL 3611967, at *4 (S.D.N.Y. July 27, 2018), *aff'd* 933 F.3d 217 (2d Cir. 2019) (holding that allegations of "slipshod banking practices, and operating with inadequate anti-money laundering controls" were insufficient for ATA aiding-and-abetting liability).

iii. **A&M**: A&M did not find that HBL failed to conduct proper customer due diligence for its customers; that is simply a blatant mischaracterization. In

fact, A&M's 2015 report stated: "[redacted]" KINGHBL00168413 at -20, -35. A&M did [redacted] but this was an inescapable reality for a branch that aimed to serve Middle Eastern customers, as HBL did. A&M's follow-on 2016 report [redacted] KINGHBL00168544 at -54-55. And though A&M did [redacted]. KINGHBL00168544 at -75.

13. ***HBL therefore respectfully requests leave to move for protective order*** to prevent Plaintiffs from continuing to pursue irrelevant and cumulative information, and thereby indefinitely extend the discovery period.

14. Finally, responding to Plaintiffs' rhetoric: HBL's counsel is no longer "new." White & Case LLP first appeared on behalf of HBL in this action on August 8, 2023 — nearly 10 months ago — and managed a seamless, thorough, and professional transition with well-respected former counsel. The litigation positions that White & Case conveys to Plaintiffs' counsel are HBL's positions. It is not productive to try to delegitimize HBL's arguments as purported inconsistencies in positions between two set of counsel.

g. Plaintiffs Seek an Order Compelling HBL to Produce and Identify the Complete Account Opening Records (including KYC Files) and Transactional Data for All True Positive Accounts

Plaintiffs: As Plaintiffs raised in the December 2023 and January – April 2024 Status Letters, HBL still has not produced and identified the complete account opening records and transactional data for the individuals and entities for whom it has identified "true positive" accounts. *See* Dkt. 241 at 27-31. This is not a "new request" as HBL claims below and has been explained in detail in the prior status letters. This issue also was on the joint agenda for the May 21, 2024 Status Conference but was not resolved. *See* Dkt. 258, Item No. 4. This issue is separate from Plaintiffs' motion to compel, which concerned account opening records and transactional data for accounts that HBL has stated it cannot yet identify as a true or false positive.

In November 2022 and April 2023, Plaintiffs served interrogatories (Nos. 4, 13, and 14) and document requests (Nos. 4, 11, 62, and 64) asking HBL to identify and produce the account opening records and transactional data for the individuals and entities that HBL agreed, or was ordered, to search. By way of example, Interrogatory No. 13 and its corollary Document Request Nos. 62 and 64 sought:

> **INTERROGATORY NO. 13**
> For each individual, organization, and entity listed in Exhibit 1, and any alias thereof, identify in the following format: (1) all HBL Account numbers associated with or held by that individual, organization, or entity, or any alias thereof; (2) the dates during which each Account was or has been operative; (3) all Account Opening Records and account statements relating to each Account (from any time); and (4) all Documents relating to Funds Transfers that You facilitated from January 1, 2006 to December 31, 2019 that involved any of the listed individuals, organizations, or entities, or any other alias thereof, regardless of whether that individual, organization, or entity held an Account with HBL.
>
> **REQUEST FOR PRODUCTION NO. 62:**
> Documents identifying any and all Accounts of HBL held by or affiliated with any of the individuals, organizations, or entities listed in Exhibit 1, or any affiliates or aliases thereof, from any point in time (including before January 1, 2006), and all Account Opening Records for such Accounts.
>
> **REQUEST FOR PRODUCTION NO. 64:**
> All Documents and Communications reflecting Funds Transfers that HBL has facilitated since January 1, 2006 that involved any of the individuals, organizations, or entities listed in Exhibit 1, or any affiliates or aliases thereof, including Documents and Communications reflecting for each such Funds Transfer:
>
> a. Transaction or Transfer Messages, including any such SWIFT, CHIPS, Fedwire, CLS, or Telex Messages;
> b. Transaction and Deal Reference Numbers, including any Related Reference Numbers;
> c. Request Date;
> d. Execution Date;
> e. Currency Code;
> f. Transaction Amount;
> g. Instruction Code(s);
> h. Instructing Party and Reference Numbers;
> i. Ordering Customer;
> j. Account Servicing Institution(s), including any intermediaries involved;
> k. Ordering and/or Sending Institution;
> l. Details of Charges and Charges Account;

> m. Sender, Receiver, and Beneficiary Information, including all reference numbers therefor;
> n. Remittance Information;
> o. Regulatory Reporting;
> p. Transaction Mapping;
> q. Description, Narrative, or Code(s) characterizing the nature of, or the reason for, the transaction;
> r. Authorization, including the date of the authorization and the person(s) responsible for authorizing the transaction; and
> s. All other categories of information that HBL maintains for Funds Transfers, including any categories of information accessible via SWIFT, CHIPS, Fedwire, CLS, other wire transfer or clearing services, and the software platforms that HBL has utilized to monitor transactions, including SafeWatch, Surety, TradeWatch, Misys, and Prime.

"Account Opening Records" is defined in the discovery requests to include "Know Your Customer" or "KYC" files and the related identification and background documents that HBL was legally required to create, maintain, and update for each of its customer accounts. This includes, for example, documentation regarding the purpose for the account, the sources of money that will fund the account, the agreements governing the businesses or joint ventures that open the accounts, the ownership and Board membership of entity account holders and related business documents, the individuals authorized to use the accounts, and Internet searches and research HBL conducted into the accountholders, authorized users, and controlling parties. Such documents disclose not only important information about the accountholder but also the individuals authorized to use the account and the ownership of the entities that may be affiliated with or use the account.

"Funds Transfers" is defined in the discovery requests to include any transaction or exchange of monies, including bank account debits or credits, withdrawals, checks, money orders, drafts, letters of credit, and currency exchange, and encompasses the transaction and payment messages that provide necessary details regarding information such as the originator, beneficiary, and purpose of a given transaction.

Account Opening Records and Funds Transfers for true positive accounts are directly relevant to HBL's knowledge of the identity of its customers and knowing support of the terrorists at issue here, which is why Courts routinely compel such materials. *See, e.g.*, *Weiss v. Nat'l Westminster Bank, PLC*, 242 F.R.D. 33, 43 (E.D.N.Y. 2007) (compelling production of a variety of account records, including "account opening records, bank statements, wire transactions, deposit slips, and all correspondence between Defendant and INTERPAL," noting they are "crucial and thus relevant to plaintiffs' claim").

Given the plain relevance of the requested documents, HBL's former counsel agreed to produce and identify them in response to Plaintiffs' interrogatories and did so for a small number of the "true positive" hits that were identified before that counsel's withdrawal. *See, e.g.*, HBL Responses to RFP Nos. 4-9, 11-12, 62-64; HBL Responses to ROG Nos. 4, 13, 14. HBL's new counsel,

however, is reneging on HBL's prior counsel's agreement to produce and identify these documents and did not disclose that fact to Plaintiffs until a couple months ago via a status letter. Specifically, HBL's new counsel has made clear that it is not producing or identifying as to ***each*** true positive account: (a) all Account Opening Records, KYC files, and Customer Due Diligence beyond those that HBL's prior counsel identified and produced for a small subset of the true positive matches; and (b) the documents (e.g., check images, payment messages, etc.) that reflect the complete information relating to the Funds Transfers for those accounts.

HBL has claimed that all of the information that Plaintiffs could need relating to these accounts are contained in (1) three excel spreadsheets that splice together certain account and transactional data that HBL employees input into internal databases, and (2) one document that combines thousands of SWIFT messages. According to HBL, the onus now is on Plaintiffs to "identif[y] the specific additional information they hope to glean" from the Account Opening Records and Fund Transfer data that HBL's prior counsel agreed to produce and that Plaintiffs have not yet seen. Dkt. 241 at 35.

HBL's new position is wrong and is another example of an eleventh hour about face regarding plainly relevant discovery that was agreed upon long ago.

First, the spreadsheets do not contain all of the KYC information that Plaintiffs have sought and to which they are entitled. As Plaintiffs have explained to HBL, the Account Opening Records and KYC files contain information that is not (and could not) be contained in HBL's created-for-litigation spreadsheets, including: complete ownership and related documentation (indeed, the spreadsheets' column for ownership is largely blank); information regarding the entity accountholders' Boards of Directors, which HBL's own documents state must be vetted as part of customer diligence; the results of WorldCheck and Internet searches for the accountholders; all persons authorized to use the account; questions and answers regarding the purpose of the account and the source of funds for the account; and, for entity accountholders, information relating to the type of business, including business agreements and articles of incorporation, which contain further information regarding the purpose and use of the account. *See, e.g.*, KINGHBL00660662 ([redacted]). Below is a screenshot of the relevant tab from one of the spreadsheets on which HBL relies, which—in addition to being largely blank—shows the spreadsheet does not contain the complete information that otherwise is (or should be) found in Account Opening Records and KYC files:[3]

[redacted]

[redacted]

Second, the spreadsheets on which HBL relies do not contain all of the necessary information relating to the Funds Transfers for the true positive accounts. The spreadsheet tab containing transactional data lacks columns for basic transaction information, including complete beneficiary (e.g., name, account number, and bank) and originator information. This tab has columns that purport to identify the "Narrative" for certain transactions but many of those columns are either blank or include incomplete information (e.g., an incomplete name or an account number that does not disclose the name of the individual or entity associated with that account). The separate document containing SWIFT messages does not fill the gap: there are many transactions for which HBL has not produced any SWIFT message, even though the transaction is coded as "Swift Transfer" in HBL's own transactional data or otherwise should have a SWIFT message. There also are many transactions relating to checks that have no information reflecting the originator, beneficiary, endorser (to the extent different), or the memo line. HBL has failed to produce any check images associated with these transactions and to the extent a SWIFT message exists for them, HBL has not produced them.

The requested Account Opening Records and Funds Transfer data are directly relevant to HBL's knowledge of its financing of terrorism. That HBL purportedly performed customer diligence that did (or should have) shown these accountholders' ties to the terrorist organizations alleged in Plaintiffs' Complaint but nevertheless provided them access to HBL's financial networks supports liability under JASTA. Further, such records are particularly important here, where HBL's Regulators and auditors repeatedly cited HBL for (a) failing to conduct proper customer diligence, including by failing to collect complete identification documents, conduct negative news screening and background checks, and update and supplement such files; and (b) failing to keep track of and/or obtain complete originator and beneficiary information for the transactions it processed, which meant those originators and beneficiaries were not being screened for sanctions violations

or other indicia of terror financing. Plaintiffs are entitled to the original files that show (or are supposed to show) this information given its absence from HBL's databases that purportedly contained and tracked the same.

HBL has claimed that the disputed interrogatories are improper under Local Civil Rule 33.3 because they are not "a more practical method of obtaining the information sought than a request for production or deposition." Dkt. 241 at 32. This argument fails for at least three reasons.

First, HBL cannot refuse to identify the information sought by these interrogatories based on the claim that they will be addressed by HBL's document production ***when HBL is simultaneously refusing to produce the documents that contain this information***. *Compare* Dkt. 241 at 32 (claiming the interrogatories "target information that also is the subject of document requests") *with id*. at 35 (confirming HBL is not producing the complete Account Opening Records and KYC files because "Plaintiffs have not identified what specific additional information they hope to glean").

Second, HBL's argument is based on an incorrect understanding of Local Civil Rule 33.3. Local Rule 33.3 provides, among other things, that (a) interrogatories seeking "the existence, custodian, location and general description of relevant documents" can be sought at any time; and (b) interrogatories seeking information that is more practically sought via interrogatory than a request for production or deposition can be sought "[d]uring discovery."

Plaintiffs' interrogatories satisfy both. These interrogatories were propounded in November 2022 and April 2023 – over a year ago, and Plaintiffs have been raising them for over four months. *Contra* Dkt. 241 at 33 (incorrectly claiming these interrogatories come "at this late stage in the discovery process"). The interrogatories seek the identification by bates number of plainly "relevant documents" reflecting the accounts and transactions that HBL processed. Such information cannot be addressed by document requests or depositions alone ***even if*** HBL's new counsel agreed to actually produce the complete documents (again, it has not). The Account Opening Records and KYC files are not saved in HBL's files with a specific file name or folder and instead have been produced piecemeal. And the Funds Transfer data cannot be readily identified when HBL is producing other spreadsheets relating to third party audits that contain transactional data for certain customers and Plaintiffs have no way of knowing if HBL is relying on those or something else to satisfy these discovery requests. *In re Weatherford Int'l Sec. Litig*., 2013 WL 5788680, at *3-4 (S.D.N.Y. Oct. 28, 2013) (rejecting responding party's argument that the requested transactional information can be found in its production and ordering the responding party to "identify[] the responsive documents" "in sufficient detail to enable [the plaintiff] to locate and identify [the records] as readily as [could the defendants]").

HBL alone knows whether a document it has produced was housed in the Account Opening Record or KYC file for a given customer, and whether a set of transactional records relates to a given account or request. HBL's claim that Plaintiffs are required to guess at this or that they must ask a deponent about every document that arguably appears to relate to customer diligence or transactional data to determine whether it was part of HBL's account records for that account (as

opposed to, e.g., a document relating to a third-party audit) is neither practical nor realistic. Courts in this District routinely compel responses to similar interrogatories for this exact reason. *See, e.g.*, *In re Weatherford Int'l Sec. Litig.*, 2013 WL 5788680, at *3-4 (ordering party to respond to interrogatory requesting identification of a "a series of specific financial transactions," explaining that "identifying these discrete transactions should entail comparatively simple responses" and "it would be inefficient to rely on witnesses at deposition to accurately recall a series of specific financial transactions made over five years ago"); *Madanes v. Madanes*, 186 F.R.D. 279, 290 (S.D.N.Y. 1999) (ordering party to answer interrogatories asking "for the identification of bank accounts, brokerage accounts, and the like" used by specific persons because "interrogatories are a more efficient means of identifying accounts" and witnesses "could hardly be expected to have comprehensive memories of their financial affairs").

Third, HBL's new counsel has identified ***no burden*** from producing and identifying by Bates number these account and transactional records that its prior counsel already agreed to produce and identify. *See In re Weatherford Int'l Sec. Litig.*, 2013 WL 5788680, at *2 (explaining that the objecting party must offer evidence showing "specifically how, despite the broad and liberal construction afforded the federal discovery rules, [an] interrogatory is not relevant or how each question is overly broad, burdensome, or oppressive"). Nor could it when HBL stated in its opposition to Plaintiffs' recent motion to compel that its process for determining that these accounts are true positives has been ***to review the customer files that correspond to those names***. Dkt. 216 at 24. HBL clearly has these records readily available.

In sum, Plaintiffs ask that HBL be ordered to produce and identify the complete Account Opening Records and Funds Transfer information (including all payment messages, check images, and any other documents necessary to determine the categories of information outlined in Document Request Nos. 11 and 64) for the true positive accounts identified to date.

HBL's claim below that this is a "new" or "unripe" production request is belied by the detailed descriptions of this precise issue in the last four status letters. Plaintiffs have repeatedly informed HBL that they have improperly refused to produce ***and*** identify the straightforward true-positive account information sought in Plaintiffs' requests. For example:

> The true reason for HBL's refusal to properly and fully supplement its responses has become apparent: ***HBL still has not produced*** account opening records, KYC files, account statements, and related information for a large number of the "true positive' hits that these requests seek and that HBL agreed to produce in response to Plaintiffs document requests despite claiming it "substantially completed" its production in January 31, 2024. . . .
>
> Also wrong is HBL's claim that Plaintiffs "have added new layers to this request." Plaintiffs' request has been the same from the outset—***i.e., the complete production of responsive information in response to the discovery requests that were served months ago***, that HBL claimed it would address, and now, still has not.

Dkt. 241 (April Status Letter) at 29-31; *see id*. at 29 (explaining, just as Plaintiffs do here, that HBL's spreadsheets still "do not contain (and could not contain) all of the information sought in these requests," including "Account Opening Records and KYC files," and "documents reflecting the actual funds transfers (e.g., the SWIFT messages, check images, etc."); *see* Dkt. 227 (March Status Letter) at 15-19 (including the exact same language on this issue).

Despite Plaintiffs raising this precise issue for the last several months, HBL never asked for a specific example of an entry on their structured data that failed to disclose the categories of information we have consistently identified as missing—until 5p ET on Friday, May 24. The following Monday was Memorial Day so the parties agreed to exchange information relating to the meet and confer—including the proposal for the production of KYC data and proposed inserts for the status letter—on the ***next business day***, Tuesday, May 28. Plaintiffs thus exchanged the specific examples then. HBL's suggestion that Tuesday was the first time these issues were raised or that this renders Plaintiffs' consistent request for complete customer account records and transactional data "***half-baked***" is belied by the parties' status letters.

HBL's Position: HBL has Satisfied its Document Production Obligations but is Endeavoring to Meet Plaintiffs' Additional Demands. There is No Issue Ripe for the Court's Consideration.

Plaintiffs again seek to divert this Court's time and attention in prematurely raising an issue that HBL is confident could be resolved through further discussion between the parties.

1. While Plaintiffs disguise this as a purported issue with HBL's interrogatory responses, Plaintiffs are in fact asserting a new request for the production of additional documents, specifically the underlying source documents for the structured data that HBL produced in January. Plaintiffs only sought to meet and confer on this new demand on May 23. Despite Plaintiffs' suggestion otherwise, the joint agenda submitted for the May 21, 2024 status conference says nothing about the production of further documents and information; it only addresses HBL's responses to certain of Plaintiffs' interrogatories. *See* Dkt. 258, Item 4 ("Plaintiffs seek to discuss (i) their request for the Court to order HBL to provide supplemental responses to interrogatories 13 and 14"). Plaintiffs also never raised the interrogatory response issue or their new document-production demand during the status conference despite the opportunity to do so.

2. Although this has now morphed into a new request for additional documents, HBL is compelled to address Plaintiffs' criticisms of HBL's interrogatory responses and HBL's document productions:

    a. HBL satisfied its discovery obligations by making structured data productions for the apparent true-positive customers, which include all applicable KYC information, account statement entries, transaction records, account numbers, and dates of account operation exported directly from HBL's internal databases and as maintained by HBL in the "usual course of business." *See* Fed. R. Civ. P.

34(b)(2)(E)(i) ("A party must produce documents as they are kept in the usual course of business."). HBL is permitted to produce in this manner because "the Federal Rules give the party responding to a discovery request the right to produce documents as they are kept in the usual course of business." *Huer Huang v. Shanghai City Corp.*, No. 19-CV-7702 (LJL), 2020 WL 5849099, at *15 (S.D.N.Y. Oct. 1, 2020).

b. HBL later supplemented its responses to Interrogatories 4, 13, and 14 to identify this structured data by Bates-numbers, despite being under no obligation to do so. These interrogatories plainly exceed the scope of Local Civil Rule 33.3 and are improper on their face. Local Civil Rule 33.3(a) provides that interrogatories served at the commencement of discovery "will be restricted to those seeking names of witnesses with knowledge of information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, or information of a similar nature." Plaintiffs' interrogatories obviously do not call for information of this nature — for example, Interrogatory 13, which Plaintiffs reproduce above, asks HBL to create bespoke work product.

c. Requests like Plaintiffs' Interrogatories, 4, 13, and 14 also contravene Local Civil Rule 33.3 because they target information that is the subject of document requests. *See, e.g.*, *US Bank Nat. Ass'n v. PHL Variable Ins. Co.*, 288 F.R.D. 282, 288-89 (S.D.N.Y. 2012) (denying motion to compel responses to interrogatories that "d[id] not conform to Local Civil Rule 33.3," including because the same information was being produced in response to document requests). HBL has already identified relevant documents in its production responsive to these interrogatories and no further supplementation should be required.

3. Plaintiffs nevertheless seek further supplementation of HBL's interrogatory responses by turning those interrogatories into document requests. The parties met and conferred on Plaintiffs' new request on May 24.

4. During the meet and confer, HBL's counsel did not outright "refus[e] to produce the documents that contain this information." Instead, HBL reasonably requested that Plaintiffs' counsel explain why they needed this additional information. HBL's counsel also asked Plaintiffs' counsel to identify examples of what Plaintiffs viewed as deficiencies in the prior structured data production.

5. As a result of that discussion, Plaintiffs' counsel committed to providing HBL's counsel examples of transactions for which Plaintiffs had been unable to locate SWIFT messages in the production and examples of check transactions for which they claim they require additional information. Plaintiffs did not do so until close of business on May 28, despite

HBL's counsel having made clear in the May 24 meet and confer that it required this information to consider its position ahead of drafting the joint status letter. Instead of promptly providing such information to HBL, Plaintiffs' counsel focused their energy on drafting a lengthy argument on this issue, making clear they had no interest in engaging in good faith with HBL to find a mutually agreeable solution. While HBL's position is that it is not required to produce duplicative data in all its various forms, HBL's counsel agreed to look at the examples so Plaintiffs' 7 pages of argumentation in this letter on a half-baked topic is surprising to say the least.

6. Plaintiffs' criticism of HBL's failure to specify a burden associated with this new request is disingenuous because Plaintiffs have failed to provide HBL's counsel sufficient opportunity to confer with its client to learn what may or may not be possible. Plaintiffs only provided specifics regarding their perceived issue this week, and HBL continues to look into the issue in good faith.

7. As before, there simply is no dispute that is currently ripe for the Court's consideration at this time, and HBL is committed to continuing to confer with Plaintiffs in good faith to resolve this issue.

h. Plaintiffs Seek Certain Relief Relating to Ripe Disputes Concerning HBL's Privilege Log

Plaintiffs: Plaintiffs noted at the May 21, 2024 Status Conference that they have raised several issues with HBL's 21,706-entry privilege log that the parties have been discussing for the last two months. On April 17, 2024, Plaintiffs sent a document identifying on an entry-by-entry basis deficiencies affecting nearly 9,000 privilege log entries in the privilege log HBL served on March 22, 2024. HBL then served on May 2, 2024 an updated log addressing certain issues that Plaintiffs raised. Plaintiffs requested a meet and confer to discuss the issues and deficiencies that remain. The parties met and conferred on May 28, 2024 and have at least the following ongoing disputes:

HBL's Overly Expansive Assertion of SAR Privilege and Confidentiality under § 314(a) of the Patriot Act: The "SAR privilege [under the Bank Secrecy Act] does not protect from disclosure '[t]he underlying facts, transactions, and documents upon which a SAR is based." *Trott v. Deutsche Bank, AG*, 2024 WL 1994342, at *2 (S.D.N.Y. May 6, 2024) (citing 12 C.F.R. § 21.11(k)(1)(ii)(A)(2)). The cases HBL cites are consistent. *See Liu Yao-Yi v. Wilmington Tr. Co.*, 2020 WL 5248471, at *2–3 (W.D.N.Y. Sept. 3, 2020) (cited by HBL) (granting a "motion to produce unredacted SAR privileged documents" after *in camera* review because "supporting or underlying materials" related to an SAR are not privileged); *Bank of China v. St. Paul Mercury Ins. Co.*, 2004 WL 2624673, at *6 (S.D.N.Y. Nov. 18, 2004) ("[T]he facts giving rise to the filing of a SAR are discoverable if those facts are available in a document created in the ordinary course of the Bank's business."). Likewise, § 314(a) of the Patriot Act precludes HBL from disclosing the fact that FinCEN has requested or obtained information—it does not protect the underlying facts, transactions, and documents. Nevertheless, HBL has made clear that it is broadly withholding documents and information that reflect those underlying facts, transactions, and

documents. For example, in the following screenshot from a document HBL redacted, only information "that 'would' reveal the existence of an SAR" should be redacted, not an entire row of other information. *Trott*, 2024 WL 1994342, at *2.

The parties thus dispute the appropriate scope of SAR and § 314(a) confidentiality, and the above redactions appear facially overbroad. Accordingly, the Court should select a sample of documents Plaintiffs have identified as potentially improperly redacted and review them *in camera*. Indeed, that is what the court did in HBL's own cited case, *Liu Yao-Yi*. Such review will enable the Court to review and, if necessary, correct HBL's systematic over-redaction of documents.

HBL's Insufficient Privilege Log Entries: Pursuant to Section V(d) of the Stipulated Protocol (Dkt. 88), Plaintiffs have requested "further information to evaluate a claim of privilege" for numerous privilege log entries. Specifically, Plaintiffs have asked HBL to further describe the nature of the supposedly privileged communication where the log entries do not include such information. This is especially important as it pertains to HBL's assertions of privilege over email attachments where it is not clear (i) whether the document being withheld contains a privileged communication and (ii) what type of communication is at issue (*e.g.*, a redline or comment from counsel). An attachment is not privileged merely because a parent email was sent to or from an attorney. *See, e.g., Roc Nation LLC v. HCC Int'l Ins. Co., PLC*, 2020 WL 1970697, at *4 (S.D.N.Y. Apr. 24, 2020) (requiring party to "disclose email attachments—even if attached to a privileged email—if the attachments do not themselves contain or refer to legal advice."). Despite multiple well-explained requests—dating back to no later than March 13, not, as HBL claims, first made on May 28—HBL has refused to provide the further information Plaintiffs have requested, in violation of their obligation to not "unreasonably withh[o]ld" such information. Stipulated Protocol (Dkt. 88) § V(d). Plaintiffs request that the Court deem privilege to now be waived. *See Aurora Loan*

Servs., Inc. v. Posner, Posner & Assocs., P.C., 499 F. Supp. 2d 475, 478–79 (S.D.N.Y. 2007) (finding privilege waived where party "[f]ail[ed] to furnish an adequate privilege log"). Alternatively, Plaintiffs request that the Court order HBL to promptly provide the requested information within two weeks.

HBL Failed to Establish Work Product Protection: HBL maintains that work product privilege attaches to any "attorney material created in connection with a regulatory investigation." But that is incorrect. The mere fact that the documents were supposedly "created in connection with regulatory investigations" does not support work product protection. HBL must "show that the [supposedly] compliance-related documents would not have been created anyway absent the threat of litigation." *J.L. on behalf of J.P. v. N.Y.C. Dep't of Educ.*, 2023 WL 4421716, at *2 (S.D.N.Y. July 8, 2023). The mere fact that the documents were supposedly "created in connection with regulatory investigations" does not support work product protection. Indeed, courts routinely reject application of the work product doctrine where the asserting party "did not show that the documents were prepared to aid counsel in preparing for specific litigation rather than ensuring proper compliance with statutory and regulatory requirements." *Id.* (citing *Weinrib v. Winthrop-Univ. Hosp.*, 2016 WL 1122033, at *6 (E.D.N.Y. Mar. 22, 2016)); *see also Durling v. Papa John's Int'l,* 2018 WL 557915, at *6 (S.D.N.Y. Jan. 24, 2018) ("The question . . . is not merely whether the party asserting privilege contemplated litigation when it generated the materials at issue, but rather whether those materials would have been prepared in essentially similar form irrespective of litigation." (cleaned up) (citing *Allied Irish Banks v. Bank of Am., N.A.*, 240 F.R.D 96, 106 (S.D.N.Y. 2007) and *U.S. v. Adlman*, 134 F.3d 1194, 1204 (2d Cir. 1998)).

HBL's cited cases do not state otherwise. In *In re Woolworth Corp. Secs. Class Action Litig.*, 1996 WL 306576, at *1 (S.D.N.Y. June 7, 1996), for example, the court found that work product was properly invoked ***after*** "class actions begin to be filed against Woolworth." And in *In re Cardinal Health, Inc. Secs. Litig.*, 2007 WL 495150, at *4 (S.D.N.Y. Jan. 26, 2007), the court held that documents were protected by work product where, on the specific facts at issue in the case, "the likelihood of civil or criminal litigation was anticipated." Here, by, contrast, HBL has not carried its burden of demonstrating that each of the documents identified by Plaintiffs was "prepared to aid counsel in preparing for specific litigation rather than ensuring proper compliance with statutory and regulatory requirements." *J.L.*, 2023 WL 4421716, at *2.

Plaintiffs request that the Court (i) order that HBL's blanket "created in connection with a regulatory investigation" assertion of work product is inappropriate and (ii) require HBL to produce all improperly withheld documents and/or provide additional privilege log descriptions and/or sworn declarations to substantiate work product for each document HBL continues to withhold as work product.

Missing Author / Missing Sender / Missing Recipients / Counsel Not Identified: Plaintiffs have identified, on an entry-by-entry basis, numerous documents for which HBL has not identified the information HBL is required to provide pursuant to Section V(d) of the Stipulated Protocol (Dkt. 88). HBL has, for example, failed to identify counsel involved with numerous documents.

HBL now claims that some—but admittedly far from all—of the privilege log entries Plaintiffs have identified as deficient "do have counsel identified." But that is, at best, a half-truth. The supposed counsel to which HBL refers is counsel HBL has never identified as its own counsel. Plaintiffs should not have to (i) guess or research which email domains relate to law firms and (ii) assume that any individual with an email domain that relates to a law firm was acting as counsel to HBL at the time of the email. It is HBL's burden to establish its own asserted privileges.

HBL also claims that, for many documents, author, sender, and/or recipient information is not available within the metadata. However, where metadata is supposedly missing, HBL has admitted that it did not conduct a reasonable investigation to try to identify the required information. Plaintiffs request that the Court hold that HBL should promptly produce the documents identified by Plaintiffs for which HBL has failed, despite multiple requests, to provide the information required under the Stipulated Protocol.

HBL's Position: HBL's Privilege Log Fully Complies With The Stipulated Protocol and Applicable Authorities. There Is, In Any Event, No Issue Ripe for the Court's Consideration

1. Plaintiffs' discovery demands implicate voluminous privileged content given the close involvement of counsel in regulatory reviews and the additional privileges that apply in the banking industry. Accordingly, HBL has painstakingly identified privileged information and logged any such information in accordance with the parties' Stipulated Protocol Regarding Discovery (Dkt. 88).

2. HBL has used the same privilege-log format for well over a year, which complies with the Stipulated Protocol. Plaintiffs only recently raised purported issues with the format of HBL's privilege log. In accordance with this Court's cooperation directive, HBL attempted to work with Plaintiffs in good faith to address these issues. Instead of working to identify a reasonable and efficient solution during the parties May 28 meet and confer, Plaintiffs' counsel declared a self-serving impasse and raised four purported issues in this letter. HBL addresses each issue in turn:

3. **Plaintiffs' Flawed Understanding of SAR Privilege and Confidentiality:** Plaintiffs inexplicably appear to be demanding that HBL violate federal law and risk criminal sanctions by un-redacting identifying details that would disclose the identity and nature of the subject of a SAR. Plaintiffs are incorrect in asserting that HBL is "broadly withholding" information under the SAR privilege. Disclosure of the information that Plaintiffs seek would cause HBL to violate the Bank Secrecy Act. The Bank Secrecy Act prohibits disclosure of the subject matter of a SAR or FinCEN review. *See, e.g.*, *Liu Yao-Yi v. Wilmington Trust Co.*, 2020 WL 5248471, at *2 (W.D.N.Y. Sept. 3, 2020) (collecting cases) (observing that the Bank Secrecy Act prohibits disclosure of information that would "disclose the existence ***or contents*** of a Suspicious Activity Report ('SAR')"); *Bank of China v. St. Paul Mercury Ins. Co.*, 2004 WL 2624673, at *5 (S.D.N.Y. Nov. 18, 2004)

(recognizing that a bank may not produce documents in discovery evidencing "the existence ***or contents*** of a SAR"); *see also* 31 C.F.R. § 1020.320(e)(1)(i) ("*General rule.* No bank, and no director, officer, employee, or agent of any bank, shall disclose a SAR or any information that would reveal the existence of a SAR.").

a. Plaintiffs criticize the redactions in the spreadsheet screenshotted above, but the redactions are narrowly tailored and necessary to avoid revealing the existence and/or contents of a SAR, including the "Case Number" and "Account ID" for the subject of the SAR identified in this document. To illustrate the problem, if HBL merely redacted the cell noting that a SAR was filed and left the name and case number while asserting the SAR privilege, Plaintiffs easily would be able to deduce the contents of the SAR, i.e., that a SAR had been filed on the identified account and case number.

b. Plaintiffs purport to rely on *Trott* but that case does not support their position. *Trott* involved discussion of the privilege as applied to Suspicious Activity Information Forms, which were internal forms that "state[d] facts about potentially suspicious banking transactions." Unlike the document in the screenshot above, those forms did not include "any analysis regarding whether a SAR should be filed" and did not "reveal the existence of a SAR" at all. 2024 WL 1994342, at *2 (S.D.N.Y. May 6, 2024). In any event, HBL has produced "[t]he underlying facts, transactions, and documents" upon which SARs were based where that information exists outside of the SAR determination itself. No *in camera* review by this Court is necessary.

4. **HBL's Privilege Log Fully Complies with the Stipulated Discovery Protocol:** Plaintiffs assert a boilerplate request for more information regarding the "nature" of the privileged communications — all apparently attachments to privileged emails. Plaintiffs accuse HBL of "unreasonably with[olding]" such information but until May 28, Plaintiffs never "explain[ed] the need for such information," in accordance with Section V(d) of the Stipulated Protocol. Contrary to Plaintiffs' representations above, Plaintiffs only identified the specific privilege log entries with which they were concerned on April 18, and provided no explanation for the need for additional information regarding the "nature" of the privileged communications. And in further correspondence on May 17, Plaintiffs simply stated that such information was "necessary." Even at the parties' meet and confer, Plaintiffs only offered a generalized and categorical explanation. In an effort to chart a reasonable path forward, counsel for HBL suggested that Plaintiffs' counsel identify a representative sample of documents for which Plaintiffs believe additional information concerning the "nature" of the privileged communication would be helpful. Plaintiffs' counsel refused and declared an impasse.

a. Plaintiffs wrongly accuse HBL of asserting attorney-client privilege solely because a document is attached to an e-mail communication with an attorney. This is wrong. HBL asserted the privilege where counsel and client exchanged draft documents, legal advice, information related to the provision of legal advice, and

where attorney work product was involved, as courts permit. *See Pearlstein v. BlackBerry Limited*, No. 13-cv-07060, 2019 WL 159382, at *12, 17, 18 (S.D.N.Y. Mar. 19, 2019) (holding draft documents exchanged between the client and counsel, information collected for the purpose of preparing or obtaining legal advice, and attorney work product were properly withheld as privileged).

b. Finally, Plaintiffs' unilateral and unfounded declaration that HBL's privilege log does not comply with the Stipulated Protocol cannot support a finding of waiver, and their request that this Court deem privilege waived should be rejected out of hand. *See Chevron Corp. v. Donziger*, 2013 WL 4045326, at *3 (S.D.N.Y. Aug. 9, 2013) (holding that "only flagrant violations of [discovery] rules should result in a waiver of privilege" and allowing the party to supplement the privilege log as needed) (quoting *Dey, L.P. v. Sepracor, Inc.*, No. 07 Civ. 2353, 2010 WL 5094406, at *2 (S.D.N.Y. Dec. 8, 2010)).

5. **HBL Has Established Work Product Protection:** Plaintiffs again endeavor to rewrite the Parties' Stipulated Protocol in asking this Court to order HBL to identify additional information for every single document over which HBL has asserted work-product privilege.

a. HBL has properly withheld documents subject to the work-product doctrine because such documents were created or exchanged by counsel as a result of regulatory investigations, which this Court has generally considered to be "in anticipation of litigation." *See, e.g.*, *In re Cardinal Health, Inc. Sec. Litig.*, No. C2 04 575 ALM, 2007 WL 495150, at *4-5 (S.D.N.Y. Jan. 26, 2007); *see also In re Woolworth Corp. Sec. Class Action Litig.*, No. 94 Civ. 2217, 1996 WL 306576, *3 (S.D.N.Y. June 7, 1996) (observing that when a law firm is retained in response to a government agency's request "the reality of impending litigation is clear"). That litigation ultimately arose in *Woolworth* is beside the point, and the facts of *Cardinal* are remarkably similar to those in this case. As in *Cardinal*, counsel was engaged by HBL in response to regulatory investigations, and HBL is properly withholding attorney work product in connection with those engagements. *See In re Cardinal Health*, 2007 WL 495150, at *5.

b. HBL reiterates its willingness to review a representative sample of documents about which Plaintiffs have concerns but should not have to identify additional information not contemplated by the Stipulated Protocol for every single one of the thousands of documents over which HBL has asserted work-product protection.

6. **Missing Author / Missing Sender / Missing Recipients / Counsel Not Identified:** HBL is not unreasonably withholding any author, sender, recipient, or counsel information on its privilege log, despite Plaintiffs contentions otherwise.

a. The Stipulated Protocol requires parties to identify the "Author, Sender, and/or Recipient(s) (To, CC(s), BCC(s))" for each document. These are defined terms in the Stipulated Protocol and refer to metadata fields identified in Exhibit A to the Protocol. *See* Stipulated Protocol, Section II(f). HBL has provided all such information as it appears in its electronic files.

b. As for identifying counsel for every single document on HBL's privilege log, many of the privilege log entries for which Plaintiffs identify this alleged "deficiency" ***do*** have counsel identified in the metadata fields or the parent email. HBL is happy to review and identify counsel for any documents where counsel is actually not included in the metadata fields, but HBL should not have to guess which documents are subject to a legitimate complaint. Plaintiffs' accusations of "half-truths" is inaccurate and completely disingenuous, where HBL confirmed to Plaintiffs in ***March*** that the counsel "***retained***" by HBL are identifiable on the log based on their email addresses. HBL also separately identified for Plaintiffs additional counsel where it may have been unclear from the data included on the log that they were counsel.

c. Finally, Plaintiffs' accusation that HBL did not conduct a reasonable investigation as to why such information might be missing is incorrect. HBL has identified all such information it has for these documents in accordance with the Stipulated Protocol. HBL has not waived any privilege by allegedly failing to provide information that does not exist, and this Court should, again, decline to find such a waiver.

i. Plaintiffs' Written Discovery Responses

HBL's Position: Plaintiffs' Written Discovery Responses on Key Issues Remain Severely Deficient.

1. ***Plaintiffs' Responses and Objections to HBL's First Set of Requests for Admission***. HBL's RFAs asked Plaintiffs to admit that certain persons and aliases named on their lists were never placed on the SDN List or on the Commerce Department's Entity List. For example:

   a. Request for Admission #1: "Admit that Abdallah Umar al-Qurayshi has never been listed on the SDN list."

   b. Request for Admission #2: "Admit that Abdallah Umar al-Qurayshi has never been listed on the Entity List."

2. This is critical information because if these names were never designated by the United States, it is hard to conceive how HBL's provision of routine banking services to such a

customer could be "conscious[] and culpabl[e]" participation in a tortious act, as required under applicable law. *See Twitter, Inc. v. Taamneh*, 598 U.S. 471, 497 (2023).

3. Plaintiffs initially asserted that they could not admit or deny these requests for over 100 names. Even when Plaintiffs supplemented their responses, they failed to supplement as to more than 50 deficient responses, and for those they did supplement, included improper qualifying language to dilute any admission. For example:

    a. Supplemental Response to Request #1: "Plaintiffs admit that the name 'Abdallah Umar al-Qurayshi'—with that exact spelling—does not appear to be on the publicly available SDN List, but Plaintiffs otherwise lack knowledge and information to admit or deny (and on that basis deny) that the individual who may use that name has never been designated on the list through alternative aliases that are unknown to Plaintiffs at this time."

4. Plaintiffs have adopted an inappropriately broad interpretation of the RFAs to avoid answering requests purportedly based on insufficient information. But the RFAs do not ask about every potential or hypothetical alias or ownership interest that might possibly exist. Rather, the RFAs ask if the specific names used by Plaintiffs appear on the publicly available SDN List or Entity List.

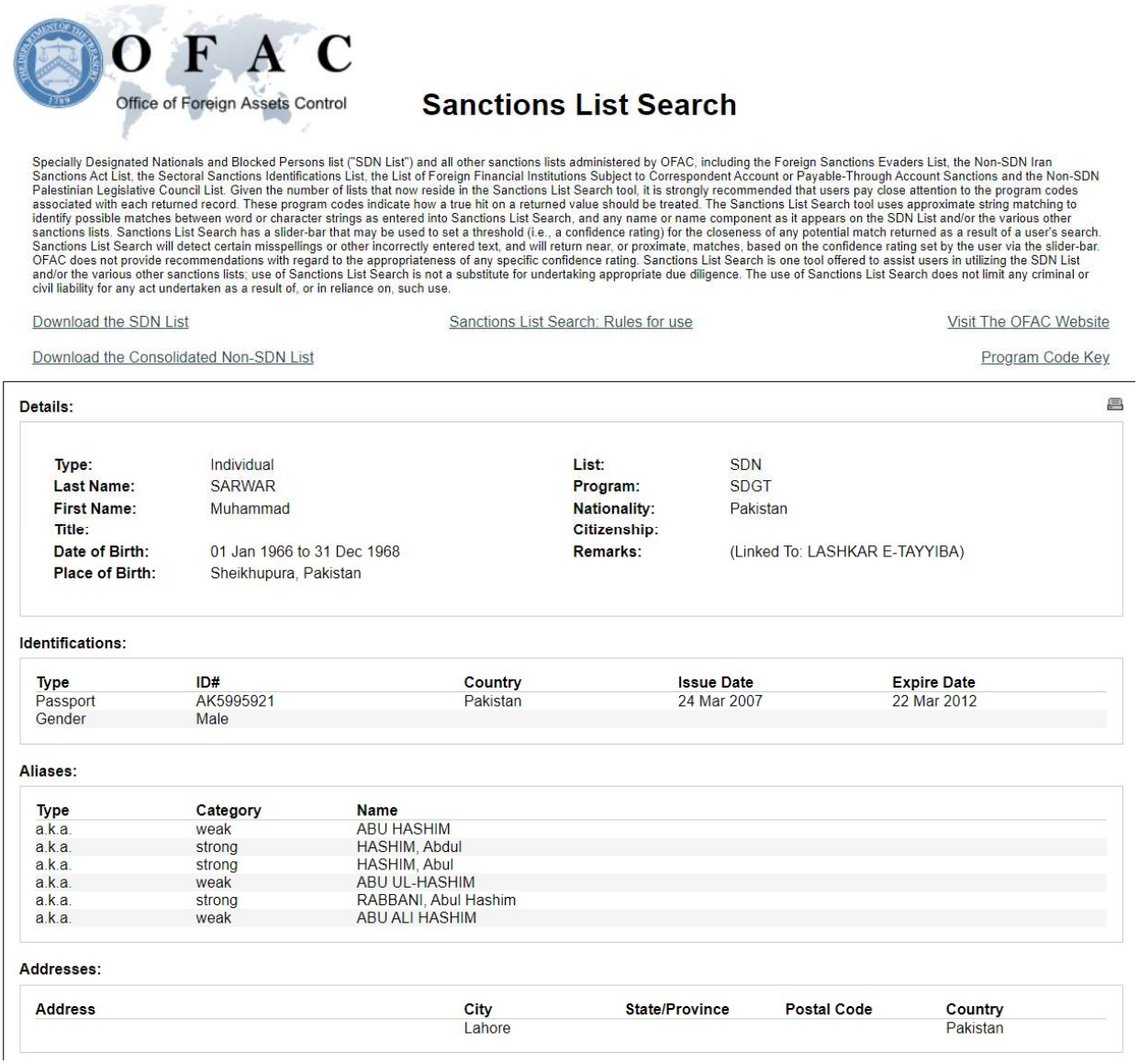
5. Plaintiffs' speculative reliance on unknown aliases for these names is no foundation for their responses where HBL's requests ask narrowly about the names on Plaintiffs' lists.

    a. This concern also does not make practical sense. Plaintiffs appear to be suggesting that while the name used by Plaintiffs on their own list is not designated, the same individual theoretically could have been designated under a different, unknown alias. But the OFAC sanctions search tool anticipates and precludes such confusion because a search for a designated name returns results for all aliases that the U.S. government recognizes as associated with that name. And Plaintiffs have not identified any factual basis to suggest that any other alias exists.

    b. For example, Plaintiffs' list of names includes Muhammad Sarwar, and Plaintiffs themselves identified two aliases associated with Muhammad Sarwar. *See* ECF No. 108-1 at 9. Typing either "Muhammad Sarwar" or any of the aliases into the "Name" field at https://sanctionssearch.ofac.treas.gov/ yields the below result, which includes the two aliases identified by Plaintiffs as well as four additional aliases.

    c. In other words, the OFAC search tool ***does the work of identifying all known aliases associated with a designated name***. Plaintiffs' counterfactual does not exist: The U.S. government does not designate individuals under secret aliases and then fail to identify the connection between that alias and the supposedly notorious

terrorist. Indeed, doing so would defeat the purpose of the SDN list of putting actors on notice of individuals with whom they should not do business.



OFAC
Office of Foreign Assets Control

Sanctions List Search

Specially Designated Nationals and Blocked Persons list ("SDN List") and all other sanctions lists administered by OFAC, including the Foreign Sanctions Evaders List, the Non-SDN Iran Sanctions Act List, the Sectoral Sanctions Identifications List, the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions and the Non-SDN Palestinian Legislative Council List. Given the number of lists that now reside in the Sanctions List Search tool, it is strongly recommended that users pay close attention to the program codes associated with each returned record. These program codes indicate how a true hit on a returned value should be treated. The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the various other sanctions lists. Sanctions List Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. Sanctions List Search will detect certain misspellings or other incorrectly entered text, and will return near, or proximate, matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN List and/or the various other sanctions lists; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

Download the SDN List | Sanctions List Search: Rules for use | Visit The OFAC Website
Download the Consolidated Non-SDN List | Program Code Key

Details:

Type:	Individual	**List:**	SDN
Last Name:	SARWAR	**Program:**	SDGT
First Name:	Muhammad	**Nationality:**	Pakistan
Title:		**Citizenship:**	
Date of Birth:	01 Jan 1966 to 31 Dec 1968	**Remarks:**	(Linked To: LASHKAR E-TAYYIBA)
Place of Birth:	Sheikhupura, Pakistan		

Identifications:

Type	ID#	Country	Issue Date	Expire Date
Passport	AK5995921	Pakistan	24 Mar 2007	22 Mar 2012
Gender	Male			

Aliases:

Type	Category	Name
a.k.a.	weak	ABU HASHIM
a.k.a.	strong	HASHIM, Abdul
a.k.a.	strong	HASHIM, Abul
a.k.a.	weak	ABU UL-HASHIM
a.k.a.	strong	RABBANI, Abul Hashim
a.k.a.	weak	ABU ALI HASHIM

Addresses:

Address	City	State/Province	Postal Code	Country
	Lahore			Pakistan

6. And Plaintiffs' purported concern about ownership interests in non-designated entities ignores the fact that the majority of the RFAs that Plaintiffs refused to admit or deny pertain to individuals, not entities.

7. As for entities, Plaintiffs are improperly hiding behind the "50 Percent Rule" to avoid admitting that ***the entity itself*** has not been designated.

a. According to OFAC, "OFAC's 50 Percent Rule states that the property and interests in property of entities directly or indirectly owned 50 percent or more in the aggregate by one or more blocked persons are considered blocked."[4]

b. This is not the same as the entity itself being designated. It pertains instead to whether a transaction with that entity is permissible under OFAC rules.

c. Even taking into account Plaintiffs' purported concern about ownership interests, Rule 36(a)(4) of the Federal Rules of Civil Procedure requires that Plaintiffs at least respond regarding the specific entities that Plaintiffs have included on their list. Yet Plaintiffs have refused to respond altogether to several dozen RFAs.

8. Plaintiffs' failure to admit or deny these simple RFAs points to the weakness of their case and the fishing-expedition nature of their requests of HBL, which acted appropriately and lawfully in respect of any accounts or transactions that may involve hits to names on Plaintiffs' lists. Plaintiffs should be required to respond directly and forthrightly, without improper qualifiers, to these straightforward requests.

9. ***Plaintiffs' Responses and Objections to HBL's First Set of Interrogatories***. HBL's Interrogatories sought the following basic information concerning the alleged relevance of the persons and aliases on Plaintiffs' lists of 550:

a. Interrogatory #2: "Separately identify, for each Person in Plaintiffs' Search Term Lists, the Terrorist Organization to which each Person provided Support for the At-Issue Attacks."

b. Interrogatory #3: "Separately identify and explain with specificity, for each Person in Plaintiffs' Search Term Lists, the Support provided to the Terrorist Organization identified in response to Interrogatory No. 2 for the At-Issue Attacks."

c. Interrogatory #4: "To the extent not covered by the foregoing interrogatories, separately identify and explain with specificity, for each Person in Plaintiffs' Search Term Lists, how that Person relates to or concerns the allegations and claims asserted in the Complaints."

10. This information is critical because under binding applicable law, HBL's provision of banking services to customers would only give rise to ATA liability if, among other elements, such customers were "so closely intertwined" with "violent terrorist activities" that HBL would have known that by providing banking services, it "was playing a role in unlawful activities," or alternatively if HBL's provision of banking services represented an

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[4] *Revised Guidance on Entities Owned by Persons whose Property and Interests in Property are Blocked*, Office of Foreign Assets Control (Aug. 13, 2014), https://ofac.treasury.gov/media/6186/download?inline.

act in furtherance of a shared goal with such alleged customer "to commit an act of international terrorism." *See Honickman v. BLOM Bank SAL*, 6 F.4th 487, 495 (2d Cir. 2021); *Zobay v. MTN Group Ltd.*, 21-cv-3503, at *35 (E.D.N.Y. Sept. 28, 2023).

11. Plaintiffs initially failed to respond regarding at least 6 names on their lists without asserting any objection. Plaintiffs later supplemented their responses to add entries for three of the missing names — Mullah Sangeen Zadran, Abdul Rehman Sareehi, and Kashif Abdul Aziz Polani — and agreed to drop from their lists the other three names — Mullah Muhammad Daud, Murtaza Bhutto, and Universal Exchange Company.

12. Plaintiffs' responses still remain too general by far to be fully responsive. For many names, Plaintiffs provided no more than a one-sentence description of the individual or entity, followed by the same boilerplate allegation used for every individual discussed in the responses that he or she was "part of and supported the Syndicate alleged in the Complaint." For example, Plaintiffs' response regarding "Abu Ahmed al-Kuwaiti" reads:

    a. Courier and close aide of Osama bin Laden (see infra 'Osama bin Laden' and 'Al Qaeda') who assisted bin Laden and al Qaeda. E.g., https://www.history.com/news/osama-bin-laden-abbottabad-compound-death; https://www.npr.org/sections/thetwo-way/2011/05/06/135994650/bin-ladens-courier-abu-ahmed-al-kuwaiti-had-several-responsibilities. Abu Ahmed al-Kuwaiti thus was part of and supported the Syndicate alleged in the Complaint that comprises multiple terrorist organizations, cells, and networks, including: al-Qaeda, which was designated a Foreign Terrorist Organization ('FTO') by the U.S. government in 1999; Lashkar-e-Taiba ('LeT' or 'LT'), a Pakistani terrorist organization designated an FTO in 2001; Jaish-e-Mohammed ('JeM'), a Pakistani organization designated an FTO in 2001, and its alter-ego Al Rehmat Trust ('ART'), which was designated an FTO in 2010; the Tehrik-iTaliban Pakistan ('Pakistani Taliban'), designated an FTO in 2010; and the Afghan Taliban ('Taliban'), which includes the Haqqani Network, a part of the Taliban designated an FTO in 2012; joint operational cells that fused al-Qaeda, Taliban (including the Haqqani Network), and LeT operatives in Kabul and the surrounding provinces (including the Kabul Attack Network). *See generally* Compl.

13. The language beginning with "was part of and supported the Syndicate" is repeated verbatim across responses.

    a. Indeed, of the 147 entries on Plaintiffs' supplemental response, only 62 in any way mention HBL, and 55 contain nothing but boilerplate language that is cut-and-pasted across responses, along with a bare-bones statement of who or what the name refers to.

14. Such boilerplate entries fail to identify with specificity the support provided to each terrorist organization for the at-issue attacks by the individual and that individual's

relevance to the allegations and claims asserted in the Complaints, as HBL requested in its Interrogatories 3 and 4. *See Oliveira v. Cairo-Durham Cent. Sch. Dist.*, No. 1:11-CV-393 NAM/RFT, 2013 WL 4678313, at *4 (N.D.N.Y. Aug. 30, 2013) (stating that answers to interrogatories "must be adequate to be a complete response and as specific as possible, and not evasive"); *Trueman v. New York State Canal Corp.*, No. CIV.109-CV-049LEK/RF, 2010 WL 681341, at *3 (N.D.N.Y. Feb. 24, 2010) ("In order for an answer to be adequate it must be a complete response to the interrogatory, specific as possible and not evasive. The answer is supposed to provide more than an idea of what the case or defense is all about.") (internal citations omitted).

15. Courts have compelled plaintiffs in ATA liability cases to supply similar information in response to Interrogatories. *See Strauss v. Credit Lyonnais, S.A.*, 242 F.R.D. 199, 235 (E.D.N.Y. 2007) (compelling plaintiffs to answer "how and in what forms and by what means such persons and/or entities received material support and/or resources from [defendant]" and "how and by what means such material support and/or resources proximately caused Plaintiffs' injuries").

16. The parties have met and conferred regarding Plaintiffs' responses and objections to both sets of written discovery requests and Plaintiffs have refused to supplement their responses in any manner. The parties are therefore unfortunately at an impasse.

17. HBL respectfully requests that the Court order Plaintiffs to submit supplemental responses that fully respond to HBL's Requests for Admission and Interrogatories, consistent with the Federal Rules of Civil Procedure, or else permit HBL to file a motion to compel supplemental responses.

Plaintiffs' Position:

Plaintiffs' Responses and Objections to HBL's First Set of Requests for Admission.

There are two separate issues HBL has raised regarding Plaintiffs' responses to HBL's requests for admission: (1) that the format of Plaintiffs' supplemented responses (*i.e.*, admitting that a name, as opposed to an individual, "does not appear to be on the publicly available [SDN or Entity] list") is "improper" because it includes "qualifying language;" and (2) that Plaintiffs are required to supplement their responses to requests regarding 50 entities. Neither is accurate. Plaintiffs' responses comply with the Federal Rules. HBL cannot ask Plaintiffs to admit information that they either do not have or cannot confirm upon reasonable investigation.

(1) Format of Plaintiffs' Supplemented Responses.

HBL's requests for admission ask whether individuals and entities (as opposed to specific names) have ever been listed on the SDN, SDGT, or Entity Lists. *See, e.g.*, RFA No. 17 ("Admit that Fatah Gul has never been listed on the SDN List."). As Plaintiffs have explained to HBL, Plaintiffs cannot know every alias or name that may be affiliated with an individual or entity and thus cannot

definitively say that an individual or entity has—as HBL asks—"never been listed" when it is possible that an alias of that individual or entity of which Plaintiffs are unaware has been listed. To address this issue, Plaintiffs agreed to state whether the requested ***name*** had never been listed and tailored its responses accordingly. *See, e.g.*, Plaintiffs' Supplemental Response to RFA No. 1 ("Plaintiffs admit that the name 'Abdallah Umar al-Qurayshi'—with that exact spelling—does not appear to be on the publicly available SDN List….").

That is not an "improper qualif[ication]." It is the product of Plaintiffs' careful compliance with Federal Rule of Civil Procedure 36, which states

> If a matter is not admitted, ***the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it***. A denial must fairly respond to the substance of the matter; and ***when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest***.

Fed. R. Civ. P. 36(a)(3). Plaintiffs properly tailored their response to admit whether a name—as opposed to the person—had been listed for the reasons above. HBL has failed to explain, let alone show, that this is improper under Rule 36. HBL's position is particularly untenable when HBL took ***the same approach*** when Plaintiffs asked HBL to admit whether a given person had been listed on a specific date:

> **REQUEST FOR ADMISSION NO. 447**
> Admit that Fazeel-A-Tul Shaykh Abu Mohammed Ameen Al-Peshawari was designated as a SDGT on July 1, 2009.
>
> **RESPONSE TO REQUEST FOR ADMISSION NO. 447**
> . . . Subject to and without waiving the foregoing objections to this Request, HBL responds that this Request is admitted ***to the extent that it appears OFAC designated an individual with the name*** "Fazeel-A-Tul Shaykh Abu Mohammed Ameen Al-Peshawari" on the referenced date.

Finally, HBL's claim that designation on a specific list is required to support liability is wrong and, in any case, irrelevant to this dispute. A transaction does not need to give rise to a sanctions violation to qualify as substantial assistance under JASTA.

(2) 50 RFA Responses that HBL Asserts Require Supplementation.

HBL identified 50 requests that it claims Plaintiffs should have supplemented to admit that the name of an entity had been listed. All 50 of the identified requests relate to entities—***not*** individuals, as HBL suggests. These entities are listed below:

- Kabul Attack Network

- Abdulraouf Ibrahim Batterjee & Brothers Company
- Al Ansari Exchange
- Ansaar Muslim Youth Centre
- Arvin Global Logistics Services Company
- Arvin Kam Construction Company
- Arvin Kam Group Foundation
- Arvin Kam Group LLC
- Arvin Kam Group Security
- Atlantis Water International
- Caravan International
- German Afghan & Khalil Construction Joint Venture
- Haji Khalil Zadran Pvt. Ltd.
- Heim-German Afghan-Hkcc Joint Venture
- Infinity International
- KNK Construction
- Lapcom Computer Stores
- Saadullah Khan & Brothers (SKB)
- Survey and Designing Company
- Universal Exchange Company
- Wall Street Exchange Center
- World Assembly of Muslim Youth
- Zurmat Construction Company
- Zurmat Foundation
- Zurmat General Trading
- Zurmat Group of Companies
- Zurmat LLC
- Zurmat Material Testing Laboratory
- Green Land Star Construction Co.
- Afghan-German Construction Company
- Al Maskah Used Car and Spare Parts
- Haji Khalil Construction Company
- Hanif Computer Zone
- Heim German Afghan Khalil Company
- Iqra Computer Products
- Iqra Computer Store
- Iqra IT Solutions
- Khalil Zadran Company
- Ologh Beg International Forwarders Ltd.
- Onyx Construction Company
- Triangle Technologies
- Altaf Khanani MLO

- Al Zarooni Exchange
- Aydah Trading LLC
- Jetlink Textiles Trading
- Kay Zone Builders & Developers
- Kay Zone General Trading LLC
- Landtek Developers
- Mazaka General Trading L.L.C.
- Seven Sea Golden General Trading
- Unico Textiles
- Wadi Al Afrah Trading LLC

Plaintiffs have repeatedly explained to HBL why they cannot admit—as HBL insists—that these entities have "never been listed." *See, e.g.*, Dkt. 241 at 43. Three of the 50 requests concern entities that are owned or operated by listed entities. German Afghan & Khalil Construction Joint Venture (RFA No. 88) consists of listed companies (Khalil Construction, German Afghan Khalil Company, and/or Afghan-German Construction Company).[5] Haji Khalil Zadran Pvt. Ltd. (RFA No. 96) is owned by Haji Khalil Zadran (who is listed) and is believed to be related to his other companies (Haji Construction Company and Khalil Zadran Company) that also are listed.[6] And Heim-German Afghan-Hkcc Joint Venture (RFA No. 100) is made up of at least two companies—Heim German Afghan Khalil Company and Haji Khalil Construction Company ("HKCC")—that are both listed.[7] As such, Plaintiffs cannot admit that the entities in these requests have never been listed.

The remaining 47 requests concern entities that have been identified on at least one government list (e.g., by the Treasury, Department of Commerce, or Special Inspector General of Afghanistan Reconstruction) or otherwise have been publicly linked to the terrorist organizations at issue here. HBL has asked Plaintiffs to admit or deny whether these entities are on either the SDN List or the SDGT List, in particular. Plaintiffs cannot make that determination as to these 47 entities because the Treasury has stated that any entity owned (directly or indirectly) 50% or more by one or more designated persons is itself considered to be designated "***regardless of whether the entity itself is listed in the annex to an Executive order or otherwise placed on OFAC's list of Specially Designated Nationals ('SDNs')***" (the "50 Percent Rule"). This language comes directly from the same resource that HBL cites above. Plaintiffs do not presently have information reflecting all direct and indirect ownership of these entities. Because an entity that is directly or indirectly owned by a person who is designated is itself considered designated, Plaintiffs cannot admit the entities (or even their names) have not been listed without reviewing their complete ownership information. Plaintiffs' responses to these requests thus adhere to Rule 36's express language by

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[5]https://www.federalregister.gov/documents/2012/04/27/2012-10104/addition-of-certain-persons-to-the-entity-list.
[6] *Id*.
[7] *Id*.

explaining "why the answering party cannot truthfully admit" it. Fed. R. Civ. P. 36(a)(4); *see, e.g.*, Plaintiffs' Response to RFA No. 59 ("… Plaintiffs are without information sufficient to admit or deny this request, and therefore deny it.") (objections omitted).

HBL has never disputed that the 50 Percent Rule applies. Instead, HBL's position on these requests is that "Plaintiffs' purported concern about ownership interests in non-designated entities ignores the fact that the majority of the RFAs that Plaintiffs refused to admit or deny pertain to individuals, not entities." That is incorrect for two reasons: (1) all of the at-issue requests pertain to ***entities***—not individuals—such that the 50 Percent Rule squarely applies; and (2) under the 50 Percent Rule, these entities cannot be characterized as "non-designated" until their complete direct and indirect ownership is considered.

In sum, Plaintiffs properly responded to these requests based on the information ascertainable following a reasonable investigation. Plaintiffs' adherence to Rule 36 does not make Plaintiffs evasive or signal some "weakness" in their case, as HBL claims in its final paragraph above.

Plaintiffs' Responses and Objections to HBL's First Set of Interrogatories.

Plaintiffs' 126 pages of single-spaced substantive interrogatory responses [Dkt. 212-7 (Ex. 6 to Pltfs Mot. to Compel)] satisfy Plaintiffs' obligations under the Federal Rules.

HBL's claim that Plaintiffs' responses are "too general by far" remains unexplained and non-specific. HBL has cherrypicked one name (Abu Ahmed al-Kuwaiti) that was never before identified to Plaintiffs in an attempt to suggest that Plaintiffs' responses as to each name are "no more than a one-sentence description." That is wrong based on even a quick scan of Dkt. 212-7. Plaintiffs' responses include detailed descriptions with citations to exemplary documents demonstrating the connection of the individuals to the terrorists and terrorist organizations responsible for the attacks. They also incorporate by reference relevant portions of Plaintiffs' 274-page Complaint that provides further responsive information and that, HBL has complained elsewhere, is ***too*** detailed. And, finally, Plaintiffs' responses incorporate by reference and cite additional resources and texts that contain responsive information. *See Tribune Co. v Purcigliotti*, 1997 WL 540810, at *2 (S.D.N.Y. Sept. 3, 1997) (explaining that a party responding to contention interrogatory is not "required to parse through documents that have already been produced to [its adversary], which [the adversary is] in a position to review themselves, in order to explain the obvious"). By way of example:

Abdul Aziz Abbasin:

> Key commander of the Haqqani Network who simultaneously functions as the broader Taliban organization's shadow governor for Taliban-controlled provinces in Paktika and Pakita in Afghanistan. *See, e.g.*, Compl. ¶ 58. As the U.S. government explained in designating Abbasin as a terrorist, Abbasin "received orders from and was appointed by Sirajuddin Haqqani to serve as the Taliban

shadow governor of Orgun District, Paktika Province, Afghanistan. Abbasin commands a group of Taliban fighters and has assisted in running a training camp for foreign fighters based in Paktika Province, and has also been involved in ambushing supply vehicles of Afghan government forces and the transport of weapons to Afghanistan." https://home.treasury.gov/news/press-releases/tg1316; *see* https://cisac.fsi.stanford.edu/mappingmilitants/profiles/haqqani-network#_ftn5.

When identifying Abbasin as a terrorist, the UN stated: "Abdul Aziz Abbasin is a key commander in the Haqqani Network (TAe.012), a Taliban-affiliated group of militants that operates from Eastern Afghanistan and North Waziristan Agency in the Federally Administered Tribal Areas of Pakistan. As of early 2010, Abbasin received orders from Sirajuddin Haqqani (TAi.144) and was appointed by him to serve as the Taliban shadow governor of Orgun District, Paktika Province, Afghanistan. Abbasin commands a group of Taliban fighters and has assisted in running a training camp for foreign fighters based in Paktika Province. Abbasin has also been involved in ambushing vehicles supplying Afghan government forces and the transport of weapons to Afghanistan." *See, e.g.*, https://www.un.org/securitycouncil/sanctions/1988/materials/summaries/individual/abdul-aziz-abbasin.

The Haqqani Network is an arm of the Taliban, was designated as a foreign terrorist organization in 2012, and is a prominent member of the Syndicate that committed the identified attacks (*e.g.*, Compl. ¶¶ 2, 4, 7, 9, 32-73, 84, 88, 95-96, 100-105, 108-113, 122-126, 146, 149, 151, 161-162, 219, 230, 247, 252, 256, 263, 267-271, 284, 290-294, 307-310, 318, 320, 323-324, 334, 338, 344, 349-354, 356, 362, 370, 377, 384, 393, 402, 409, 417, 427, 444, 462, 468, 475, 483, 492, 502, 514, 521, 532, 562, 571, 586, 593, 606, 625, 629, 637, 657, 667, 676, 684, 694, 705, 716, 745, 754, 763, 770, 778, 806, 814, 821, 831, 842, 850, 860, 867, 876, 885, 896, 905, 916, 928, 935, 942, 954, 968, 977, 987, 997, 1007).

Abdul Aziz Haqqani:

A senior member of the Haqqani Network and brother to Haqqani Network leader Sirajuddin Haqqani. https://2009-2017.state.gov/r/pa/prs/ps/2015/08/246335.htm. Abdul Aziz Haqqani was "involved in planning and carrying out improvised explosive device (IED) attacks" during the relevant time period and "assumed responsibility for all major Haqqani Network attacks after the death of his brother, Badruddin Haqqani" in 2012. *Id.*; *see* Compl. ¶¶ 294, 369, 383, 443, 452, 461, 467, 501, 513, 520, 531, 551, 592, 624, 628, 666, 683, 693, 715, 769, 798, 805, 820, 830, 895, 927, 953, 967, 976, 986, 996.

As noted above, the Haqqani Network is an arm of the Taliban and was designated as a foreign terrorist organization in 2012. Both the Haqqani Network and Abdul Aziz Haqqani's brothers Sirajuddin and Badruddin Haqqani feature heavily in Plaintiffs' Complaint for their role in the Syndicate and perpetrating the identified attacks (*e.g.*, ¶¶ 2, 4, 7, 9, 32-73, 84, 88, 95-96, 100-105, 108-113, 122-126, 146, 149, 151, 161-162, 219, 230, 247, 252, 256, 263, 267-271, 284, 290-294, 307-310, 318, 320, 323-324, 334, 338, 344, 349-354, 356, 362, 370, 377, 384, 393, 402, 409, 417, 427, 444, 462, 468, 475, 483, 492, 502, 514, 521, 532, 562, 571, 586, 593, 606, 625, 629, 637, 657, 667, 676, 684, 694, 705, 716, 745, 754, 763, 770, 778, 806, 814, 821, 831, 842, 850, 860, 867, 876, 885, 896, 905, 916, 928, 935, 942, 954, 968, 977, 987, 997, 1007).

Abdur Rehman:

> The U.S. government designated Abdur Rehman for serving "as a Taliban facilitator" and fundraiser who claimed, as of mid-2009, to have conducted an attack in Afghanistan. https://home.treasury.gov/news/press-releases/tg1316. "As a Taliban fundraiser, both he and his organization—a religious school in Karachi, Pakistan, and center for recruiting, indoctrinating, meeting, and facilitating funding for militants—were directly linked to supporting the Taliban." *Id*.
>
> Abdur Rehman also has close ties to other designated terrorist organizations that are prominent members of the Syndicate that HBL supported. *Id*. For example, Rehman "has "provided facilitation and financial services to al Qaeda," including by housing al Qaeda facilitators in Pakistan and travelling on behalf of an al Qaeda facilitator to move funds for the Taliban and militants in Pakistan, including funds "used to finance al Qaeda and Taliban suicide attacks and terrorist operations in Afghanistan." *Id*.
>
> Rehman also has ties to JeM and al Akhtar Trust (designated charity of al Qaeda that provides financial support to al Qaeda fighters in Afghanistan), *see* https://home.treasury.gov/news/press-releases/tg1316 & https://home.treasury.gov/news/press-releases/js899, both of which Plaintiffs allege played important roles in the Syndicate that perpetrated the attacks in the Complaint (*e.g.*, ¶¶ 2, 4, 9, 102-121, 163, 167-169, 174, 219, 230, 231, 247, 252, 256, 294, 301). Such interoperation across Syndicate members and networks also is consistent with and directly relevant to Plaintiffs' allegations regarding the interoperation of the JeM, the Taliban, and al Qaeda in furtherance of the Syndicate. *E.g.*, Compl. ¶¶ 294-354.

Al Rehmat Trust:

> Al Rehmat Trust ("ART") was formed as part of a rebranding of JeM (*see infra*). JeM is a Sunni extremist group founded by Masood Azhar with funding and support

from Osama bin Laden that was designated as an FTO in 2001. In June 2008, JeM began shifting its focus from Kashmir to Afghanistan in order to step up attacks against U.S. and Coalition forces.

JeM supported al-Qaeda attacks by acting as an agent and proxy for al-Qaeda. JeM did this by directly seconding its fighters to al-Qaeda. Like its ally LeT, another of JeM's key roles is to serve as a talent scout for al-Qaeda, Taliban, and Haqqani terrorists in Afghanistan. The U.S. government has recognized the key role that JeM has played in recruiting suicide bombers to support the Taliban and al-Qaeda's shared jihad in Afghanistan.

JeM also is responsible for taking the lead in collecting and paying out so-called "martyr payments" to the al-Qaeda-aligned suicide bombers who blow themselves up in Afghanistan. For example, the Complaint alleges that JeM facilitated martyr payments to all or nearly all of the suicide bombers who committed the attacks in this case. *E.g.*, Compl. ¶¶ 102-121, 252, 294.

ART has been involved in fundraising for JeM, including for militant training and indoctrination at its mosques and madrassas. It also provides support to the families of terrorists who have been arrested or killed. Like JeM, ART is headed by Mohammed Masood Azhar, along with his associate Ghulam Murtaza. ART was designated an FTO in 2010.

See also, e.g.:

- National Counterterrorism Center, Jaish-e-Mohammed (JEM) (last updated Sept. 2013), https://www.dni.gov/nctc/groups/JEM.html
- Associated Press, Pockets of Taliban, al-Qaeda Fighters are Said to be Regrouping in Afghanistan, St. Louis Post Dispatch, 2002 WLNR 1220832 (Mar. 2, 2002)
- U.S. Senate Committee on Homeland Security & Governmental Affairs, Hearing: The Future of Homeland Security: Evolving and Emerging Threats (July 11, 2012) (Prepared Statement of Frank J. Cilluffo, Director, Homeland Security Policy Institute, George Washington Univ.) (emphasis added), https://www.hsgac.senate.gov/imo/media/doc/Testimony-Cilluffo2012-07-11.pdf
- House Foreign Affairs Subcommittee on Asia and the Pacific and Terrorism, Nonproliferation, and Trade, Hearing: Pakistan: Friend or Foe in the Fight Against Terrorism, U.S. Cong. News, 2016 WLNR 21268984 (Jul. 12, 2016) (testimony of Bill Roggio)
- Highlights of U.S. Broadcast News Coverage of the Middle East from May 8, 2010 (Full Transcripts) Federal News Service Transcripts, 2010 WLNR 27829208 (May 9, 2010)

- Nirupama Subramanian, Pakistan: two questions, multiple realities, Hindu, 2009 WLNR 23938767 (Nov. 27, 2009)
- Rajesh Ahuja, Pathankot Attackers Called Head of Jaish Charity Organisation, Hindustan Times (Jan. 18, 2016)
- https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/entity/jaish-i-mohammed

HBL has not identified which entries in Plaintiffs' responses are "too general," what HBL claims is missing from those entries, or how HBL is entitled to that specific information, particularly when HBL has not provided any substantive response or citation of documents in response to Plaintiffs' contention interrogatories on the basis that they are premature. Nor has HBL disputed—as Plaintiffs have repeatedly noted—that these requests concern matters of expert opinion and discovery that will be disclosed according to the procedural schedule.

HBL's apparent belief that it is entitled now or at any point to an exhaustive listing of every fact or evidence (including expert opinion) that potentially relates to a terrorist or attack is simply incorrect. *See, e.g.*, *Ritchie Risk-Linked Strategies Trading (Ireland), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. Dec. 7, 2010) (holding that a responding party is not required to provide "every fact, every piece of evidence, every witness, and every application of law to fact" in response to interrogatories); *Phillies v. Harrison/Erickson, Inc*., 2020 WL 6482882, at *2 (S.D.N.Y. Nov. 4, 2020) (explaining that "[c]ourts generally resist efforts to use contention interrogatories as a vehicle to obtain every fact and piece of evidence"); *Linde v. Arab Bank, PLC*, 2012 WL 957970, at *1 (E.D.N.Y. Mar. 21, 2012) (rejecting attempt to compel "a complete identification of witnesses and evidence" in response to interrogatories). Discovery is ongoing. As Plaintiffs told HBL on the meet and confer, they will reasonably supplement their responses to the extent new information arises, including based on forthcoming productions from the Department of Defense. *Contra* HBL's Position *supra* (erroneously claiming "Plaintiffs have refused to supplement their responses ***in any manner***.").

HBL's cited case law does not support compelling further responses here. In *Strauss*, the plaintiffs refused to provide ***any substantive response*** to the at-issue interrogatory on the basis that it sought the party's contentions at an early stage in discovery. *See Strauss v. Credit Lyonnais, S.A*., 242 F.R.D. 199, 228-29 (E.D.N.Y. May 25, 2007) (ROG No. 4 and response to same). The court held that E.D.N.Y. had no blanket rule that contention interrogatories must be addressed at the end of discovery and directed the party to respond, while noting that they can continue to supplement as discovery progresses. *Id*. at 234-35. Plaintiffs, by contrast, responded ***at the outset*** with 126 pages of substantive responses and have told HBL they will continue to supplement their responses as applicable. Plaintiffs are not being "evasive" and have complied with their obligations under the Federal Rules.

Respectfully,

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